SUPREME COURT OF THE UNITED STATES.

No. 222.

BENJAMIN H. CHEEVER, APPELLANT,

VS.

JESSE B. WILSON AND ANNIE J. WORCESTER.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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In the Supreme Court of the District of Columbia, the 22 day of Oct. 1867.

I, Return J. Meigs, clerk of the Supreme Court of the District of Columbia, certify that originals, of which the following writings are true and complete copies, are on file and of record in the clerk's office of said court; and that said originals, together, constitute the record of the proceedings of said court in a certain cause therein depending and lately decided, entitled, Benjamin H. Cheever *vs.* Annie J. Worcester, Louis Worcester, Jesse B. Wilson. 1398, equity docket 5.

In testimony whereof, I have subscribed by name and caused the seal of the said Supreme Court to be hereunto affixed, the day and year aforesaid.

[SEAL.] R. J. MEIGS, *Clerk.*

1 *Bill of complaint.*

BENJAMIN H. CHEEVER
vs.
ANNIE J. WORCESTER, LOUIS WORCESTER and JESSE B. WILSON. } In chancery.

To the honorable the judges of the Circuit Court of the District of Columbia, sitting as as a Court of Equity:

Humbly complaining shows unto your honors, your orator, Benjamin H. Cheever, that heretofore, to wit, on the eighth day of September, A. D., 1842, he was married to Annie J. Worcester, then Annie J. Hughes, one of the defendants in this suit; that prior to the solemnization of said marriage, a marriage contract and settlement was made and entered into by and between said complainant and said defendant, by which the estate, right, and interest of said defendant in and to certain property, viz., lot No. 12, of the subdivision of original lots numbered 6 and 7, of square No. 461, and certain parts of lots in square B, in the city of Washington, District of Columbia, were conveyed to and vested in Sarah T. Hughes upon the trusts and for the purposes set forth in said marriage settlement, to which, as recorded in Liber W. B. No. 97, fol. 47, et seq, one of the land records for the county of Washington, in the District of

2 Columbia, your orator prays leave to refer, and read as a part of his bill of complaint; that during the continuance of said marriage, four children, the fruits thereof, were born, viz., John T. H. Cheever, now aged about fifteen years; Caroline P. Cheever, now aged about thirteen years and six months; Benjamin H. Cheever, now aged about seven years and six months, and Victoria J. Cheever, now aged about four years and six months.

That early in the year 1857, said defendant removed to and became a resident of Marion county, in the State of Indiana, and shortly thereafter brought a suit against this defendant under the statute of said State, in the Circuit Court of said county, for the

purpose of obtaining a divorce "a vinculo matrimonii" from this complainant; that subsequently, to wit, at the August term of the Madison Circuit Court, (to which court said cause had been removed by the order of the judge of said court, ordering a change of venue,) by a decree duly passed by said court, a divorce "a vinculo matrimonii" was granted to said defendant; and it was thereby further decreed "that one-third part of the rents and profits of said estate, which would be coming to the said Annie in her own right be, 3 and the same hereby is, decreed to the said Benjamin as the father and natural guardian of said children, for the support, education, and maintenance of such as should be in his custody;" and it was further agreed that said "Annie shall execute to said Benjamin a good and sufficient authority or power to receive said rents and profits for the purposes herein declared, which shall be sufficient for the purpose." Your orator herewith exhibits a transcript of the record in said cause, marked Exhibit B. H. C. No. 1.

Your orator shews unto your honors, that said defendant has failed and refused to execute such a power and authority as is required by said decree; and that since obtaining said divorce she has intermarried with one Louis Worcester; your orator shows unto your honors, that he, as their father and natural guardian, has now in his custody the three eldest of said children, and that he has not been able to collect, and has not received any portion of the rents decreed to him for their benefit.

Your orator further shows unto your honors, that one Jesse B. Wilson is the tenant of the house and premises situated on lot No. 12, of square No. 461, for which he pays an annual rent of about $1,300, (thirteen hundred dollars,) and that shortly after said decree was passed, and in the month of September, A. D. 1857, said 4 complainant gave notice to said Wilson of said decree, and called upon and requested him to pay to said complainant, pursuant to its requirements, the one-third part of said rents which was payable to said Annie J., the same being two-thirds thereof, said Sarah J. Hughes receiving one-third thereof in lieu of dower; he then utterly refused, and still refuses so to do.

Your orator prays that said Annie J. Worcester, Louis Worcester, Sarah T. Hughes, and Jesse B. Wilson be made parties defendant hereto; and that your honors will grant to your orator the United States writ of injunction restraining and enjoining said Wilson from paying to said Annie the one-third part of her portion of the rent for said premises; and that your honors will pass a decree directing and requiring said Wilson to pay over to said complainant one-third part of the rent payable to said defendant as the same shall become due; and that said defendant shall account for and pay over to your orator one-third part of all the rent she has received, or which has been collected from the premises included in said marriage settlement since the date of said decree; and that your honors will grant to your orator such other and further relief in the premises as to your honors shall deem just and proper, and the nature of the case may 5 require; and that your honor will grant to your orator, the

United States writ of subpœna, commanding said defendants that they be and appear before your honorable court at a certain day to be named therein, and make full, true, and perfect answer to all and singular the allegation in said bill of complaint contained, as if specially interrogated thereto; and your orator will ever pray.

W. J. HOWE, JR.,
For Complainant.

Filed 21st June, 1858.

Exhibit B. H. C. No. 1.

Be it known that amongst the records of the proceedings, judgments, orders, and decrees of the Madison Circuit Court, in the State of Indiana, is the following, to wit:

Petition for divorce.

ANNIE J. CHEEVER
vs.
BENJAMIN H. CHEEVER.

Be it remembered that on the eighteenth day of August, one thousand eight hundred and fifty-seven, the plaintiff in the above-entitled cause, by her attorneys, filed in the office of the Madison Cir-
6 cuit Court the following, to wit:

Be it known that amongst the records of the proceedings and judgments of the Marion Circuit Court, in the State of Indiana, is the following, to wit:

Petition for divorce.

ANNIE J. CHEEVER
vs.
BENJAMIN H. CHEEVER.

Be it remembered that on the sixteenth day of June, one thousand eight hundred and fifty-seven, the plaintiff in the above-entitled cause, by Barbour, Ketchum & Coffin, her attorneys, filed in the office of the clerk of the Marion Circuit Court her petition for divorce against defendant; thereupon said attorneys also filed the affidavit of a competent person that said defendant is not a resident of the State of Indiana, and thereupon a notice was issued for publication of the pendency of this action to said defendant.

And afterwards, on the 17 day of August, A. D. 1857, the above-named plaintiff filed in said clerk's office the accompanying affidavit, notice, and order of the judge of said court, granting a change of venue in said cause to the Madison Circuit Court made at Chambers:

7 STATE OF INDIANA, *Marion County, ss*:

I, John C. New, clerk of the Marion Circuit Court, in and for said county and State, do hereby certify the foregoing is a true statement

of the proceedings had in said court, in the above-entitled cause, and that the accompanying papers are all the papers on file in said cause.

In witness whereof, I hereunto affix the seal of said court, and subscribe my name at Indianapolis, this 17 day of August, 1857.

[SEAL.] JNO. C. NEW, *Clerk.*

In the Marion Circuit Court.

Plaintiff's petition.

ANNIE J. CHEEVER
vs.
BENJAMIN H. CHEEVER.

STATE OF INDIANA, *Marion County:*

Annie J. Cheever, who is a resident of Marion county, in the State of Indiana, complains of Benjamin H. Cheever, and says that the plaintiff and defendant intermarried on the day of , 1842, and that they cohabited together as husband and wife until
8 the day of Dec., 1854, at which time the defendant, without any cause whatever, deserted and abandoned the plaintiff, with the intention of a final separation from her, and has continued his abandonment from thence hitherto.

The plaintiff further shows that, at the time of her marriage with the defendant, she was seized and possessed of real estate, which she received by descent from her father, which was also secured to her by marriage settlement; that said real estate was situated in the city of Washington, and District of Columbia, capable of yielding twelve or fifteen hundred dollars income per annum; but, through the bad management of the defendant, the income has been reduced to less than eight hundred dollars.

The plaintiff further shows that, immediately before the abandonment of his family, he anticipated, received, and converted to his own use the rents and income of the real estate of the plaintiff for the next ensuing year, and left the plaintiff and his family wholly unprovided for, and with no resources except the charity of her friends; and the defendant has wholly failed to provide for the plaintiff and the two youngest children from the said time of desertion hitherto.

9 The plaintiff further shows that the conduct of the defendant towards her has been harsh and cruel and severe; that on one occasion, on the day of December, 1854, he attempted to cut her throat with a razor.

She further shows that there was born to the parties during their said cohabitation four children, whose ages are, respectively, as follows: Thomas, now aged 13 years, Caroline, now 12 yrs., Henry, now 6 years, and Josephine, now 3 years and 6 months; that the two former are with the defendant, and that the two latter are with and under the control of, the plaintiff.

She further shows that she has a large amount of Tehuantepec railroad stock, to wit, two hundred and fifty thousand dollars, which

is of little value, and a small amount of personal property, but nothing more than is necessary for the immediate use of herself and two children.

The plaintiff prays this honorable court that a divorce may be decreed to her from said marriage contract; that the court will order that she shall hold in her own right the said Tehuantepec railroad stock and the small amount of personal property now belonging to her; that the guardianship and custody and education of said infant children may be entrusted and secured to her; that the de-
10 fendant may be forever enjoined from claiming or interfering with any of said property, or with the custody and guardianship of said children. And she prays for other proper relief.

LUCIAN BARBOUR &
JOHN L. KETCHUM,
Att'ys for Plaintiff.

In the Madison Circuit Court.

Answer and cross-petition.

BENJAMIN H. CHEEVER
ats.
ANNIE J. CHEEVER. } Petition for divorce.

And the said Benjamin H. Cheever, for answer to said petition, comes and says that he denies all and every allegation contained in said petition, and requires strict proof.

O. H. SMITH,
Att'y for Def't.

And the said Benjamin H. Cheever, for cross-petition on his part, in which he makes the said Annie J. Cheever a defendant, complains and says that heretofore, to wit, on the 8th day of September, in the year 1842, at the city of Washington, in the District of
11 Columbia, he was married to the said Annie J. Cheever, and lived with her as husband and wife until the month of December, 1854; that during the time they so cohabited as husband and wife they had born to them four children, to wit: John Thomas Hughes Cheever, now aged about fourteen years and six months; Caroline P. Cheever, aged about thirteen years; Benjamin H. Cheever, aged about seven years; and Victoria Josephine Cheever, aged four years; that said John Thomas Hughes Cheever and said Caroline P. Cheever are now with the said Benjamin, going to school; that said Benjamin H. Cheever is now residing with his grandmother, Mrs. Hughes, in the city of Washington, and the said Victoria Josephine Cheever is now with her mother, the said Annie J. Cheever, in the State of Indiana.

The said Benjamin H. Cheever further shows to the court that before his intermarriage with the said Annie J. Cheever, to wit, on the 6th day of September, in the year 1842, there was settled upon the said Annie, for her separate use, certain real estate, especially

described and specified in said settlement, which settlement, dated as aforesaid, is made a part of this cross-petition, to be here inserted, marked by copy A, to wit: Benjamin H. Cheever and A. M. Hughes. Recorded November 5, 1842.

12 To Sarah F. Hughes:

This indenture, of three parts, made this sixth day of September, in the year of our Lord one thousand eight hundred and forty-two. between Benjamin Harrison Cheever, of the first part, Annie Maria Hughes, of the second part, and Sarah F. Hughes, (all of the city of Washington,) of the third part.

Whereas, Thomas Hughes, late of the city of Washington, deceased, did by his last will and testament, which was duly proved and recorded in the Orphans' Court of Washington county, in the District of Columbia, devised and bequeathed to Sarah F. Hughes, his wife, and Joseph Hughes, his son, all and singular, his real and personal property in fee in trust; to hold the same for the purposes and interests declared in and by said will;

And, whereas one of the trusts declared in and by the same in regard to a part of the property of the said Thomas, being that part which is hereinafter mentioned and specified, was that the same should, if necessary, be conveyed to the said Sarah T. Hughes, in trust for the sole and separate use of the daughter of the said Thomas Hughes, viz: Annie Maria Hughes, her heirs and assigns,

13 until the said Sarah F. should see fit to convey and release the same to the said Annie Maria;

And whereas the said Joseph Hughes, by his indenture bearing date on or about the 10th day of March, 1840, did release to the said Sarah T. Hughes all the title and estate which by the will of the said Thomas aforesaid, vested in lien in and to the following lot and parcel of land lying in the city of Washington, being lot number 12 of the original lots No. 6 and 7, as subdivided in the square No. 461, together with the buildings and appurtenances thereto belonging, so that the said lot and premises have become vested, by force of the said will and the release of the said Joseph, in the said Sarah F. Hughes, subject, together with certain lots and parts of lots in square B in said city, to the trusts declared in the said will of and concerning the said property in favor of the said Anna Maria Hughes;

And whereas it was the purpose and interest of the said Thomas Hughes, as manifestly appears by the said will, that all the lands and property subjected to the trusts thereby declared in favor of the said Anna Maria should be and remain the sole and separate property of her, the said Anna Maria;

And whereas a marriage is intended shortly to be had and solemnized between the aforesaid Benjamin Harrison Cheever and the said Anna Maria Hughes, and whereas it is the wish and desire of

14 the said Benjamin, party of the first part, that all the said property mentioned in the said will as secured or intende d to be secured to the said Anna Maria shall be and remain her sole and

separate property in event of and notwithstanding the said marriage, and that he, the said Benjamin H. Cheever, his heirs and assigns shall by an appropriate instrument of contract be precluded from any control, right, or power of intermeddling with or receiving the rents and profits thereof, and that the same shall be and remain to the said Anna Maria and to such uses as she, notwithstanding the said marriage, shall from time to time appoint.

And whereas the said Sarah T. Hughes, named in the said will as the trustee for holding the estate, declared in favor of the said Anna Maria till she should see fit to release the same to her, being desirous that such secure and permanent provision may be made for the said Anna Maria, who is her daughter, as will the most effectually promote her happiness, hath agreed that the estate of her, the said Anna Maria, in the lands and tenements hereinafter mentioned, shall be conveyed and assigned to her in trust for the said Anna Maria and to such uses as she may direct and appoint. To the end thereof that the intent of the said parties may be effected—

15 This indenture witnesseth, that the said parties of the first part, and second party, for and in consideration of the premises and of one dollar to them by the said party of the third part in hand paid, the receipt whereof they do hereby acknowledge, have granted, bargained and sold, assigned and conveyed, and by these presents they do hereby grant, bargain and sell, assign and convey to her, the said Sarah T. Hughes and to her heirs and assigns all that certain lot of ground, being lot 12 of the subdivision of lots 6 and 7, in square No. 461, in the city of Washington, together with the buildings and appurtenances thereto belonging, and also all the estate, right and title of the said Anna Maria Hughes, both at law and equity, in and to the lots and parts of lots owned by the said Thomas Hughes in square B in the said city of Washington, to have and to hold the said land and premises to her, the said Sarah T. Hughes, and to her heirs and assigns forever, in trust nevertheless to and for the following interests and purposes, and no other, to wit: in trust to suffer and permit her daughter, the said Anna Maria Hughes, to receive, take and enjoy the rents, issues and profits of the said lands and premises to her sole and exclusive use and benefit,

16 free and unrestrained of any control by the said party of the first in case of the said intended marriage, or of any husband to whom she may hereafter be married, and free from any liability to the debts, contracts or obligations of any husband whom she may marry, during the natural life of her, the said Anna Maria, and after her death then in trust to the use of any child or children of the said Anna Maria by the said Benjamin H. Cheever, and if there be no child or children so begotten, then in trust to permit the said Anna Maria to dispose of the same by her last will and testament.

And the said party of the third part for herself and her heirs doth covenant with the said party of the first part, his heirs, executors and administrators, that she and her heirs shall and will stand seized of the premises herein conveyed to the uses herein declared, and

that she will well and truly do and perform all the trusts herein devolved upon her.

In testimony whereof the said parties have hereto set their hands and affixed their seals on the day and year first above written.

[SEAL.] BENJAMIN H. CHEEVER.
[SEAL.] ANNA M. HUGHES.
[SEAL.] S. F. HUGHES.

Sealed and delivered in the presence of—
W. CRANCH.

17 And the said Benjamin H. Cheever further says, that the use, rents and profits of said real estate, the same lying and being in the city of Washington, in the District of Columbia, are of great annual value, to wit, of the annual value of two thousand dollars; and the said Benjamin H. Cheever further says, that he is the owner in fact of one thousand shares of one hundred dollars each of of Tehuantepec Company stock, the certificates for which are nominally in the name of the said Anna J. Cheever.

And the said Benjamin H. Cheever further says, that on or about the month of December, 1854, a disagreement arose between him and the said Anna J. Cheever, that soon became and is wholly irreconcilable without any reference whatever to a divorce from each other; that in consequence of the disposition of the said Annie it was impossible to live longer with her, and he was compelled to abandon her, which he did with intent never to live with her again; that it is impossible that any reconciliation can ever take place between them; that he tried long to live with the said Annie as her husband, but cannot do so without destroying the happiness of the remainder of his life. He therefore prays the court to grant him a divorce a vinculo matrimonii from the said Annie J. Cheever. He further prays
18 the court to order, adjudge and decree that the custody of the said John Thomas Hughes Cheever and the said Caroline P. Cheever be committed to him as their father and natural guardian until they shall respectively arrive at the age of twenty-one years; that he shall have the custody of the said Benjamin H. Cheever, jr., and Victoria Josephine Cheever whenever he shall require the same. He further prays the court to order, adjudge and decree that he shall have and hold in his own right the said one thousand shares of a stock of one hundred dollars each in the Tehuantepec Company, and that the said Annie J. Cheever shall duly assign the certificates of said stock, now being in her own name, to him.

He further prays the court to order, adjudge and decree that the rents and profits of the said real estate described in the said marriage settlement of the 6th day of September, 1842, shall be set apart and decreed to the said Benjam. H. Cheever, as the father and natural guardian of the said infant children and heirs, for their maintenance, education and support; and that said real estate shall at the death of said Annie J. Cheever be the property of said infant heirs and children for their maintenance, education and support; and
19 that said real estate shall at the death of said Annie J. Cheever

be the property of said infant heirs in fee simple, and require said Annie to execute such assurances as will secure to said heirs the fee simple of said real estate subject to her life estate only.

And will your honor grant to your cross-petitioner such other and further relief as shall be deemed just and equitable.

And your cross-petitioner as in duty bound will ever pray.

BENJAMIN H. CHEEVER,
By O. H. SMITH, *Sol.*

Madison Circuit Court, Indiana.

Answer to cross-petition.

ANNIE J. CHEEVER
ats.
BENJAMIN H. CHEEVER. } Petition for divorce.

And the said Annie J. Cheever, for answer to said cross-petition of said Benjamin H. Cheever, says that she denies each and every allegation and statement in said cross-petition inconsistent with or denial of the matters and things set up and stated in her original petition, and this she is ready to aver and prove.

BARBOUR & KETCHUM & COFFIN,
Att'ys for Plaintiff.

20 Afterwards, to wit, at the August term, A. D. 1857, of said Madison Circuit Court, on the third periodical day of said term, (being on the 26th day of August, 1857,) before the Honorable Stephen Major, sole judge of said court, is found the following, to wit:

Divorce.

ANNIE J. CHEEVER
vs.
BENJAMIN H. CHEEVER. } No. 78.

The papers in this cause, upon change of venue from the Madison Circuit Court, having been filed in this court on the 19th day of August, 1857, the parties, by their counsel, come, and the defendant, Benj. H. Cheever, now files his answer to the original petition of the said Annie J. Cheever, and thereupon the said Annie J. Cheever files her affidavit of residence in the county of Marion, at the date of the filing of the petition, in these words, to wit:

Commenced in the Marion Circuit and changed to the Madison Circuit Court.

ANNIE J. CHEEVER
v.
BENJAMIN H. CHEEVER.

Be it remembered that on this 24th day of August, A. D. 1857, personally appeared before the undersigned, a notary public of Marion county, State of Indiana, the above-named plaintiff, Annie

21 J. Cheever, who being duly sworn, upon oath says, that she was, at the time the petition in the case was filed, and she still is, a bona-fide resident of the county of Marion, State of Indiana, and further says not.

ANNIE J. CHEEVER.

Subscribed and sworn to before the undersigned, a notary public of Marion county, State of Indiana, this 24th day of Aug., 1857.

Witness my hand and seal notarial.

[SEAL.] FRANCIS SMITH, *N. P.*

And thereupon the said Benjamin H. Cheever now files his cross-petition against the said Annie J. Cheever in these words, (—) to which cross-petition the said Annie J. Cheever appears without process, and files her answer in these words, (—)

And thereupon this cause being at issue between the parties, is set down for hearing on the original bill and answer thereto, the cross-petition of the defendant, Benj. H. Cheever, and the answer thereto, and being now called for trial, it is, by consent of the parties, submitted to the court for trial and decree, without the intervention of a jury, and the court having heard the evidence, find that a decree a vinculo matrimonii between the parties ought to be
22 granted. The court find the marriage, abandonment and residence of the said Annie J. Cheever, the births and names and ages of the children, as stated in the original petition, to be true, and the residue of said petition to be untrue.

It is therefore ordered, adjudged, and finally decreed by the court, that the bonds of matrimony and relation of husband and wife, heretofore solemnized and subsisting and existing between the said parties, to wit: Annie Josephine Cheever, sometimes called and known by the name of Annie Maria Cheever, and the said Benjamin H. Cheever, be, and the same is hereby annulled, dissolved forever, and considered of no force or binding effect whatever, and both the said Annie and the said Benjamin be, and they are each forever dissolved from every and all obligations whatever growing out of said marriage relation, and hereafter the said Annie shall be named and called by her maiden name of Annie Josephine Hughes, and not by her present name of Annie J. Cheever, or any other name.

And now afterwards come the parties, and upon their agreement and by their consent, the following decree is rendered by the
23 court in relation to the children and property referred to in the petition and cross-petition, to wit:

It is further ordered, adjudged, and decreed by the court, that the said Benjamin H. Cheever shall have the lawful custody as father and natural guardian of the said John Thomas Hughes Cheever, and Caroline P. Cheever; that the said Victoria Josephine Cheever shall, for the present, and until the further order of this court, remain with her said mother Annie, where she now is, and the court reserve the right to the said Benjamin H. Cheever at any time in open court to move the court upon affidavit for the custody of the said Victoria

Caroline, to be given to him absolutely, which motion may be made upon filing a notice and the affidavit in the clerk's office of the court, or serving copies of the same upon the said Annie, ten days before the term at which the motion shall be made. It is further ordered, adjudged, and decreed by the court, that the right, title, and all interest whatever of the said Annie J. Cheever, in, over, or to the one thousand shares of one hundred dollars each of Tehuantepec Company stock, the certificates of which are in her name, be, and the same is hereby, vested in the said Benjamin H. Cheever, and the said Annie J. Cheever is hereby directed and required in
24 that name to execute the necessary and proper assignment of said stock to enable the said Benjamin to receive the same in his own name.

It is further ordered, adjudged, and finally decreed by the court, that said Benjamin H. Cheever, as the father and natural guardian of the said children of the said Benjamin and Annie, that may be in his custody while they remain infants, may receive for their several uses, for their support, education, and maintenance, the one-third part of the rents and profits of the following described real estate, lying and being in the city of Washington and District of Columbia, mentioned in the trust deed made a part of the cross-petition, that is to say, the lots and parts of lots owned by Thomas Hughes, lying in the city of Washington, being lot numbered twelve, of the original lots No. (6) six and (7) seven, as subdivided in the square No. (461) four hundred and sixty-one, together with the buildings and appurtenances thereto belonging; and also the lots and parts of lots owned by the said Thomas Hughes, in square "B," in the said city, the one-third part of the rents and profits of said real estate that would be coming to the said Annie in her own right be, and the same is hereby decreed to the said Benjamin, as the
25 same shall hereafter become due and payable for the uses and purposes of said infant children as aforesaid, during the lifetime of said Annie, and the other two-thirds of said rents and profits to be received by her for her own use during her natural life. The said infants, after they become of age, severally to receive their pro rata share of said one-third of said rents and profits, and at the death of said Annie, the said real estate and every part and parcel thereof shall vest in, and the uses and trusts, rents and profits thereof, shall be and remain forever in the said children and heirs herein before named of the said Benjamin and Annie; that is, the said John Thomas Hughes Cheever, Caroline P., and Victoria Caroline, and their heirs, forever. And the said Annie shall execute to the said Benjamin a good and sufficient authority or power to receive said rents and profits, for the uses and purposes herein declared, which shall be sufficient for the purpose.

It is further ordered, adjudged, and decreed by the court, that the said defendant pay and satisfy the costs of this suit, all of which is finally ordered, adjudged, and decreed by the court.

26 Afterwards, to wit, on the 3d judicial day of the February term of said court, A. D. 1858, (being on the 24th day of said month,) before the same judge is found the following, to wit:

Now comes S. Yandes, esq., att'y for Benjamin H. Cheever, and L. Barton, esq., att'y for Annie J. Cheever, and on their motion each of said parties has leave to withdraw their respective depositions filed in this court at the last term thereof, in the cause then pending for divorce between said Cheever and Cheever.

STATE OF INDIANA, *County of Madison, ss*:

I, Peter H. Laneir, clerk of the Circuit Court in and for the county and State above named, do hereby certify that the within and foregoing is a true and full copy of the papers and proceedings in said entitled cause, now on file and of record in the clerk's office of said county.

In testimony whereof I hereunto affix the seal of said court and subscribe my name as clerk, at Anderson, this 12th day of March, A. D. 1858.

PETER H. LANEIR, *Cl'k.*

[Madeson county court seal.]

27 *Subpœna.*

DISTRICT OF COLUMBIA, *to wit*:

The United States of America to the marshal of the District of Columbia, greeting:

You are hereby commanded to summon Annie J. Worcester, Louis Worcester, and Jesse B. Wilson, if they shall be found in the county of Washington, that they be and appear in the Circuit Court of the District of Columbia, at rules to be held for the county of Washington, at the city of Washington, on the first Monday of August next, to answer the bill of complaint of Benjamin H. Cheever, filed in court here against them. Hereof fail not at your peril, and have you then and there this precept.

Witness the Hon. James Dunlop, chief judge of the said court.

Issued the 21st day of June, 1858.

JNO. A. SMITH, *Cl'k.*

(Stone.)

Memorandum.—The defendants to enter their appearance in the suit on or before the day on which the above subpœna is returnable, otherwise the bill may be taken pro confesso.

Endorsed: Summoned Jesse B. Wilson. Non est the others. W. Selden, marshal. (R. Oct. 23, '53.)

The joint answer of Louis Worcester, and Annie J. Worcester, his wife, defendant to the bill of complaint of Benjamin H. Cheever, a complainant against them and others exhibited.

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These respondents saving and reserving to themselves all benefit and advantage of exceptions to the manifold errors, inaccuracies, and inconsistencies in the said complainant's bill contained, nevertheless, in answer thereto, or unto so much thereof as they are advised it is material to answer unto, answering say: That they admit the execution of the ante-nuptial settlement in the said bill mentioned between the respondant, Annie J. Worcester, then Annie J. Hughes, the said complainant, and the defendant, Sarah T. Hughes; that the marriage then in contemplation between this respondent, Annie, and the complainant was afterwards duly had and celebrated, and that issue was born thereof, as is stated in the said complainant's bill; that the matrimonial suit in the said bill mentioned between this respondent, Annie, and the said complainant was afterwards in fact instituted, as is stated in the said bill, and that a decree of divorce a vinculo matrimonii was passed in the said cause adjudging and decreeing,

29

amongst other things, that one-third of the rents of this respondent's real estate actually coming to this respondant in her own right should be paid unto the said complainant, and that in order to that end this respondant, Annie, should execute unto the said complainant a sufficient power and authority to enable him to have and collect the said proportion of the said rents. And this respondants further answering, say that the said lot numbered (12) twelve, being parts of lots six (6) and seven (7) in square numbered 461, in the city of Washington, is of this respondant, Annie's, separate estate, and that two-thirds of the rents of the same with the buildings thereon are payable to this respondant, Annie, in her own right; and that the same are now in the tenure and occupation of one Jesse B. Wilson, at the yearly rent of thirteen hundred dollars ($1,300,) by virtue of two certain indentures of demise between this respondant, Annie, and the said Sarah T. Hughes, and the said Jesse B. Wilson, dated respectively on the 13th day of September, 1855, and the 16th day of July, 1857, by which said first-mentioned lease the said parties demised and let the said premises unto the said Wilson for the term and estate of five (5) years from and after the first of October,

30

1855, and by which said last-mentioned indenture of demise the said parties did further grant and demise unto the said Wilson the said premises for the further term and estate of five (5) years, to be computed from the first day of October, 1860, which said first and last-mentioned leases are recorded respectively in the land records of Washington county, D. C., in Liber J. A. S., No. 128, at folios 260, and No. 151, folios 157, R. D. And this respondant, Louis Worcester, further answering saith that of the matters and things hereafter mentioned he hath no personal knowledge, but that he hath read the same, and verily believes the same to be true as stated, and adopts the same for his answer in the premises.

And this respondent, Annie, further answering, saith that since the existence of the relation of landlord and tenant between this respond-

ant and the said Jesse B. Wilson, the said Wilson hath been under advance to this respondant in divers large sums of money and hath furnished and afforded to this respondant from time to time divers groceries and merchandise in the way of his business of grocer, and that this respondant is now indebted unto the said Wilson in the sum of five thousand dollars or thereabouts, all and singular of which said indebtedness was incurred and sus-
31 tained by this respondant on the credit and security of the said property, so as aforesaid in the tenure and occupation of the said Wilson; that it is to say, this respondant and the said Sarah T. Hughes did, on or about the 26th day of November, 1856, by their indenture, grant and convey the said property unto James M. Carlisle and William A. Maury, and the survivor of them, and the heirs and assigns of such survivor, upon the special trust and confidence to release an indebtment of this respondent to the said Wilson, in the sum of $700, and also any advances that might be made to this respondent by the said Wilson not exceeding $300, in addition to the said first-mentioned sum of money; that is to say, that the said Wilson, from and after the 1st day of October, 1857, should appropriate and apply the rents of the said premises, as they fell due and accrued, to the payment and satisfaction of the said indebtment. And this respondent saith that the said additional sum of $300 was in part advanced to this respondant by the said Jesse B. Wilson, making a total indebtment of $1,000, all which will more fully and at large appear by reference to the land records of Washington county, in Liber J. A. S. No. 128, at folios 260, &c., &c., to which this respondant
32 craves leave to refer.

And this respondant, further answering, saith that she did afterwards, on or about the 11th day of February, 1857, execute and deliver unto the said Wilson another assignment and transfer of the the said rent to secure the payment of a further advance, in the sum and amount of two thousand one hundred and eighty (2,180) dollars.

And this respondant, further answering, saith that the whole of the said aggregate indebtness of $5,000, or thereabouts, was loaned and advanced, as aforesaid, upon the special faith and agreement of security; that the same was to be recovered to the said Wilson upon the said rents, in manner and form aforesaid. And this respondant saith that the whole of said sum of money was advanced and loaned prior to the passing of the said decree of divorce, with the exception of the whole or a part of the sum of one thousand dollars, which was advanced unto this respondant in the month of August, 1857, when this respondant informed the said Wilson that a decree of divorce had been pronounced in the said matrimonial suit, and that said decree was in due subservience to his rights in the premise; but this respondant saith that in any event the said
33 last-mentioned sum of one thousand dollars was loaned and advanced, in obedience to an agreement and understanding in point between this respondant and the said Wilson, made and concluded before the passing of said decree of divorce, by which agreement or understanding the said Wilson agreed and promised to become under

advance to this respondant in further sums of money not exceeding two thousand dollars, or thereabouts, and which said agreement was part of the consideration which moved this respondant to grant unto the said Wilson the said further lease and estate of five years.

And this respondant, further answering, saith, in answer to so much of the said bill as charges and imputes to this respondant a failure and refusal to execute a power and authority to the said complainant to collect and receive the said rents, in conformity to the requirements of the said decree, that before the passing of the said decree, when this respondant was informed by her counsel, the Hon. Lucius Barbour; and this respondant verily believes it to be the fact, that he had informed the said complainant's counsel in the said suit, Mr. O. H. Smith, that this respondant was indebted, as aforesaid, to the said Wilson in the sum of
34 $5,000, or thereabouts; that the said indebtedness was charged upon the said property, and that an arrangement that might be effected touching this respondant's separate estate must necessarily be in subordination to the said debt and charged in encumbrance, and that said complainant's counsel gave in his adhesion and concurrence to the proposition so advanced by this respondant's counsel. This respondant saith that the said decree of divorce doth not notice the existence of the said encumbrance; but this respondant saith that the said complainant had notice in fact of the said encumbrance before the passing of the said decree.

And this respondant, further answering, saith that on or about the 27th day of August, 1857, she did execute and deliver unto the said complainant's counsel, in the said matrimonial cause, a power and authority unto the said complainant to collect and receive the said proportion of one-third of the said rents of the said property, in the tenure of the said Wilson, coming to this respondant; in which power or authority was also contained a special reservation and exception of the rights of the said Wilson, all which will more fully appear by reference to a copy of the said power or authority herewith filed, and marked Exhibit L. W. No. II, to which reference is hereby made.
35 And the respondant saith that the said power or authority was in fact tendered and offered to this defendant for execution by the said complainant's counsel, and was after execution accepted by the said complainant's counsel, and this respondant believes it to be in the complainant's control and possession. This respondant therefore, answering, saith that in so far as the said complainant's bill is devised to produce the impression that this respondent hath failed and refused to execute a sufficient power within the terms of the said decree, that it is wholly untrue and unfounded. This respondant executed the only power she could conscientiously execute without embarrassing the said Wilson, and threatening the stability of his security in the premises for the said indebtment. This respondant is well content that the interest of the said complainant in the said proportion of the said rents should attach, provided the same be not preferred to the meritorious and bona-fide indebtment and security of the said Wilson, which was specially charged, as aforesaid, upon the said property.

And these respondants, having now fully answered to the said bill, pray to be here dismissed, with the proper costs of this respondant Louis in this behalf most wrongfully sustained.

ANNIE J. WORCESTER.
LOUIS WORCESTER.

CARLISLE & MAUREY,
Sol's for Def'ts.

Filed January 10th, 1859.

36 UNITED STATES OF AMERICA, *District of Maryland:*

Be it remembered, and it is hereby certified, that on this tenth day of December, A. D. 1858, before the subscribed, a commissioner of the Circuit Court of the United States for the fourth circuit, in and for the district of Maryland, personally appeared Annie Worcester and Louis Worcester, who signed the above answer in my presence, and made oath on the Holy Evangely of Almighty God that the matters stated in the aforegoing answer are true, to the best of their knowledge and belief.

JOHN HANAN,
U. S. Com'r for District of Maryland.

THE UNITED STATES OF AMERICA, *District of Maryland, to wit:*

I, Thomas Spicer, of the Circuit Court of the United States for the fourth circuit, in and for the Maryland district, do hereby certify that John Hanan, esquire, before whom the foregoing affidavit was taken, was, at the time of taking the same, a commissioner duly appointed by the said Circuit Court, pursuant to the act of Congress entitled "An act for the more convenient taking of affidavits and bail in civil causes depending in the courts of the U. S.;" and to all his acts as such free faith and credit is and ought to be
37 given, as well in courts of justice as thereout.

In testimony whereof I hereunto subscribe my name and affix the seal of the said Circuit Court, this tenth day of December, in the year of our Lord one thousand and eight hundred and fifty-eight.

[SEAL.] THO. SPICER,
Cl'k Cir. Ct.

Exhibit L. W. No. 1.—Power of attorney.

Know all men by these presents, that I, Annie Josephine Hughes, late Annie Josephine Cheever, sometimes heretofore called Annie Maria Cheever, divers good and lawful considerations me hereto moving, and in obedience to the order and decree of the honorable the Madison Circuit Court in the State of Indiana, granting and decreeing a divorce a vinculo matrimonii between me and my late husband, do hereby assign and set over to said Benjamin H. Cheever all the stock in the Tehuantepec Company, (called Sloo stock,) a corporation, standing in my name, and I hereby appoint Nathaniel F. Potter my true and lawful attorney, for me and in my name, irrevocable, to

38 assign said stock, on the books of said company, in due and proper form, in my name, to the said Benjamin H. Cheever, or such other person as he shall designate, so as effectually to carry into effect said assignment for the use and benefit of said Benjamin, as is contemplated in said decree. I do further hereby, for the purpose of carrying out said decree, in obedience thereto, assign over and release to the said Benjamin H. Cheever, to be received by him as the same shall accrue, for the use of our children who may be in his custody, during my life, the one-third part of all the rents and profits that shall accrue to me on the real estate and improvements lying in the city of Washington, in the District of Columbia, secured to me by deed of trust bearing date the 6 day of September, 1842; and I hereby authorize and empower him or his lawfully constituted agent to receive, demand and receipt for said one-third part of said rents and profits, as the same shall accrue, for the uses and purposes aforesaid, in my name, as fully to all intents and purposes as I could have done before said decree of said court was rendered.

[*This assignment of rents is subject to an incumbrance upon said rents to my agent, Jesse B. Wilson, of about $5,000.]

39 Witness my hand and seal, at Indianapolis, in the county of Marion and State of Indiana, on this twenty-seventh day of August, A. D. 1867.

[SEAL.] (Signed) ANNIE J. HUGHES.

Attes:
O. H. SMITH.
LUCIAN BARBOUR.

*Interlined in the original.
Filed.

STATE OF INDIANA, *Marion County, ss:*

Be it known that on the twenty-seventh day of August, A. D. 1857, personally (appeared) came before the undersigned, a notary public within and for the county of Marion, and State of Indiana, Annie Josephine Hughes, known to me to be the same person named in the above power as Annie J. Cheever, and acknowledged that she signed, sealed, and delivered the same for the uses and purposes therein declared.

In testimony whereof I have hereunto affixed my notarial seal and subscribed my name, at the city of Indianapolis, in the county of Marion, and State of Indiana, on the day and year above written.

[L. S.] (Signed) JAMES GREENE, *Not'y Pub.*

40 This sentence on the previous page, "This assignment of rents is subject to an incumbrance upon said rents to my agent Jesse B. Wilson, of about $5,000," is in the handwriting of Annie J. Hughes, and was interlined before signing.

(Signed) JAMES GREENE, *Not'y Pub.*

Answer of Jessee B. Wilson, &c.—Filed 10 *Jan'y*, 1859.

The separate answer of Jesse B. Wilson, defendant, to the bill of complaint of Benjamin H. Cheever, complainant, against him and others exhibited.

This respondant, saving and reserving to himself all benefit and advantage of exception to the manifold errors, imperfections and inconsistencies in the said complainant's bill of complaint contained, nevertheless for answer thereto or unto so much thereof as he is advised it is material for him to answer, answering, says:

That he well admits the execution of the ante-nuptial agreement and settlement between the said complainant, the said defendant,
Annie, and the said Sarah T. Hughes, trustee, in the said com-
41 plainant's bill mentioned; that the same was entered into in contemplation of marriage between the said complainant and the said defendant Annie; that the said marriage was duly had and celebrated, and that issue was born thereof, as is stated in the said complainant's bill.

And this respondant further answering says, that he is informed and verily believes that the said matrimonial suit between the said complainant and the said defendant Annie, in the said bill of complaint mentioned, was in fact instituted, and that a final decree of divorce a vinculo matrimonii was pronounced in the same; and amongst other things in tenor and effect, as stated in the said bill of complaint, that is to say, that the said complainant should have and receive one-third part of the rents and profits of the separate estate of the said defendant Annie, coming to her in her own right; and that in order to the enjoyment of the same, the said defendant Annie should execute unto the complainant a good and sufficient form or authority to collect and receive the said rents and profits; but this respondant doth not admit the validity or regularity of the said decree, or that the same is operative to affect his rights in the premises, but, on the contrary, this respondant reserves to him-
42 self the right to impeach the said decree, if occasion should offer and require him so to do. This respondant further admits that a portion of the separate estate of the said defendant, to wit: lot 12, being parts of lots 6 and 7, in square 461, is now, and has been for a long time, in his tenure and occupation, at the yearly rent of thirteen hundred dollars, ($1,300,) upon the terms and estates hereinafter mentioned; that is to say heretofore, to wit, on or about the tenth day of September, 1855, the said defendant Annie, and the said defendant Sarah T. Hughes, trustee, by their indenture lease of that day and date, did demise and to farm let the said parcel of ground and premises to this respondant, for the term and estate of five years from the first day of October, thence next ensuing, as will more fully and at large appear by reference to a copy of the said indenture of lease herewith filed and exhibited, and marked Exhibit J. B. W. No. I. And the said parties heretofore, to wit, on or about the 16th day of July, 1857, and before the expiration of the said term of years, did, by their certain indenture of lease of that date,

further grant and convey unto this respondant the said parcel of ground and premises, for the additional term and estate of five
43 years, to be computed from the first day of October, which will be in the year 1860, which said instrument was duly recorded among the land records of the county of Washington, in Liber J. A. S., No. 151, folios 51, &c., to which this respondant craves leave to refer, this respondant tendering himself ready to produce the originals of the said deeds when and where the same may be required.

This respondant further answering saith, that since the existence of the relation of landlord and tenant between this respondent and the said defendant, Annie, and the said defendant, Sarah T. Hughes, this respondent has from time to time been under advance to the said defendant, Annie, in divers large sums of money; that on or about the 20th day of November, in the year 1865, this respondent was under advance to the said defendant, Annie, in the sum and amount of seven hundred dollars, ($700,) and she, the said defendant, being desirous of procuring further advances from this respondent, in addition to the said sum of $700, and not exceeding with the said sum one thousand dollars, did together with the said Sarah T. Hughes, on or about the day and year last aforesaid, by their certain deed of that date, grant and convey the reversion of the said parcel of
44 ground and premises to James M. Carlisle and William A. Maury and the survivor of them, his heirs and assigns, upon the special trust and confidence to secure the payment of the said indebtment as well actual as prospective, in manner and form following, that is to say: that from and after the first day of October, 1857, this respondent, being tenant as aforesaid, should retain and apply the rents of the said premises as they fall due as payments on account of the said indebtments and until the same should be satisfied, which said deed and contract of security specially refers to the said first-mentioned indenture of lease, and which said deed was duly recorded in the land records of the said county in Liber J, A. S. No. 128, at folios 260, &c., to which this respondent craves leave to refer. And this respondent saith, that he did in fact advance unto the said defendant, Annie, the sum of three hundred ($300) dollars in addition to the said seven hundred dollars, making a total indebtment of one thousand dollars, ($1,000.)

And this respondent further answering saith, that heretofore and after the above-mentioned transaction, this respondent became under advance to the said defendant, Annie, in another large sum of
45 money, to wit, about the sum and amount of two thousand four hundred and twelve dollars, ($2,412 00,) and that the said defendant, Annie, on or about the 11th day of February, 1857, executed and delivered unto this respondent a further assignment and transfer not only of the rents and profits of the said premises, but also the rents and profits of the rest and residue of the said defendants, Annie, separate estate to secure the payment of the sum of two thousand one hundred and eighty (2,180 00) dollars, a copy of which said instrument of assignment is herewith filed, marked Exhibit J. B. W. No. 2,

to which reference is hereby made; and this respondent further saith that during the month of August, 1857, he advanced unto the said defendant, Annie, the further sum of one thousand dollars, (1,000,) upon the special agreement and understanding that the said further sum was to be secured as theretofore upon the rents and profits of the said premises so as aforesaid in the tenure and occupation of this respondent, and upon the rents and profits of the rest of the said defendants, Annie's, estate; and this respondent further saith, that the said defendant, Annie, is indebted unto him in the further sum of

$1,337 30 for divers articles of merchandise and groceries
46 and advances and payments of cash, as is evidenced by a particular account thereof herewith filed and exhibited, and marked Exhibit J. B. W. No. 3, all and singular of which, including the said large sums of cash advanced, were afforded, paid and advanced upon the special request of the said defendant, Annie, and upon the distinct and positive agreement and understanding that the same were to be secured by the said rents and profits and were a valid lien and incumbrance upon the same, that all and singular the said indebtness was incurred by the said defendant, Annie, previously to the passing of the said decree of divorce, and before this respondent had any notice or intimation thereof, saving and excepting the said sum of $1,000, advanced as aforesaid during the month of August, 1857, a portion or the whole of which may have been advanced after this respondent had been informed that a decree of divorce had been passed in the said the suit; though this respondent knew nothing of the terms of the said decree saving that the defendant, Annie, had informed this respondent that he was fully protected in the premises; but this respondent answering saith, that the said sum of $1,000 last mentioned was advanced to the said defendant,

Annie, under a distinct and special agreement made and
47 concluded between her and this respondent before the said decree had been passed and by which this respondent had undertaken and agreed to advance to the said defendant, Annie, a certain sum or amount of money of which the said sum of $1,000 was part and parcel, such contemplated indebtment to be secured as theretofore upon the rents and profits of the said defendant, Annie's, separate estate, the said defendant, Annie, having exacted from this respondent the promise of said farther advance of monies as a necessary condition to the said extension of this respondent's lease on the said premises, and that all and singular the monies aforesaid were advanced upon the personal sollicitations and importunities of the said defendant, Annie, who held out to this respondent the adequacy of his security in that he was vested with full authority to make successive applications of the said rents as they fall due upon account of and in dimunition of the said indebtment. And this respondent further answering saith, that in the month of July, 1857, he began to apply the rents as well of the said premises in his occupation as of the rest and residue of the said defendant, Annie's, separate estate to the satisfaction and curtailment of the said indebtment, and hath continued to apply the same ever since successively as they fall

48 due, but that the said indebtment is not yet paid, the said defendant, Annie, being still indebted unto this respondent in a large sum of money, that is to say in the sum and amount of three thousand seven hundred and five 39-100 dollars current, as will more fully and at large appear by reference to a particular account of the same herewith filed and exhibited and marked Exhibit J. B. W. No. 3, to which reference is hereby made. And this respondent further answering saith, that being applied to by the complainant to attorn to him for one third of the rents payable to the said defendant, Annie, he informed the complainant of the indebtment aforesaid, and that the same was secured as aforesaid upon the rents and profits of the said premises, and that he, the respondent, could not pay any part or portion of the said rents to the said complainant until the said indebtment was fully paid. And this respondant further answering saith, that being a bona-fide incumbrance, and having furnished, advanced and provided the monies, goods and merchandise aforesaid upon the credit of the separate estate of the said defendant, Annie, this respondant conceives that the said decree in the said matrimonial
49 suit was and is wholly inoperative to weaken, destroy or impair the obligation of the said contract or contracts of indemnity and security between this respondent and the said defendant, Annie, and that the said decree, if operative to any intent, should take effect in subordination to the said contracts of security.

And this respondent having now fully answered, prays to be hence dismissed with his proper costs, in this behalf most wrongfully sustained.

CARLISLE AND MAUREY,
Solicitors.

Sworn to and subscribed this 10th day of Jan'y, 1859, before me.

[SEAL.] F. J. MURPHEY, *J. P.*

Exhibit J. B. W. No. 1.

This indenture made this tenth day of September, 1855, between Sarah T. Huges and Annie I. Cheever, of the city of Washington, in the District of Columbia, of the first part, and Jesse B. Wilson, of said city and District, of the second part, witnesseth, that the said parties of the first part, for and in consideration of the yearly rents and covenants hereinafter reserved and contained, on the part and behalf of the said party of the second part, his
50 executors, administrators, and assigns, to be paid, reserved, and performed, have demised, granted and to farm letten, and by these presents do demise, grant and to farm let unto the said party of the second part, the brick store on the south side of Pennsylvania avenue, between Sixth and Seventh streets, now occupied by the said party of the second part, together with the dwelling house over said store, with all and singular the rights and appurtenances thereunto belonging, situated in said city.

To have and to hold the said store and dwelling house to the said party of the second part, his executors, administrators and assigns from the first day of October next, for during and until the term of five years thence next ensuing, and fully to be complete and ended, yielding and paying therefor during the said term unto the said parties of the first part, their executors, administrators, heirs, or assigns the yearly rent of one thousand three hundred dollars current money, in and by the following even and equal portions and payments, viz: for the store, the sum of two hundred and fifty dollars on the last day of each quarter succeeding the first day of October next,
51 and for the dwelling house, the sum of twenty-five dollars on the last day of each month succeeding the said first day of October next.

And the said party of the second part hereby further covenants and agrees, for himself, his executors, administrators, and assigns to make all necessary repairs upon the dwelling house and to keep the said dwelling house in good order and condition, and that neither he nor they shall under let, set over, or transfer the said premises without the consent of the said parties of the first part, and that he will, on the expiration of the said term of five years from the first day of October next, quietly and peaceably surrender and yield up the possession of the said premises unto the said parties of the first part, their heirs, executors, administrators or assigns.

In witness whereof, the said parties in this indenture have hereunto interchangeably set their hands and seals on the day and year first above written.

[SEAL.]	(Signed)	S. T. HUGHES.
[SEAL.]		A. J. CHEEVER.
[SEAL.]		J. B. WILSON.

Signed, sealed and delivered, in the presence of—
H. H. MUNRO.
LOUIS WORCESTER.
JOSEPH B. STANLEY.

52 Mrs. Ann J. Cheever
To Jesse B. Wilson Dr.

1856.			
Nov.	13.	To 1 bottle brandy.....	2 00
"	27.	" 1 bot. gin, 63; 1 box soap, 5..	1 13
"	"	" 1 box mustard.....	12
Dec.	1.	" Cash	50
"	29.	" 1 6-lb. box adamantine candles @ 31½.....	1 87
"	"	" 1 gall. E. oil, 1 00; 5 lb. soap, 9–45	1 45
"	"	" 1 lb. starch, 12; 1 sett table matts, 63	75
"	"	" 1 lb. pat. candles, 60; 1 lb. pecans, 20.....	80
			8 62

Dec.		30.	To 1 pt. brandy, 75; 1 pt. J. spirits, 37	1 12		
"		31.	" 2 lb. sugar crackers @ 12½	25		
1857, Jan'y		3.	" 2 galls. cider, 75; 1 gall. demijohn, 5	1 25		
"	"	"	" ½ gall. demijohn	62		
"	"	6.	" Cash for draft	100 00		
"	"	"	" 1 pt. Irish whiskey, 38; 1 lb. crackers, 10	48		
"	"	12.	" 1 bottle brandy *a*	2 00		
"	"	15.	" 1 gall. cider *a*	38		
						106 10
"	"	16.	" Cash	44 87		
"	"	17.	" Cash	62 63		
"	"	20.	" 1 bot. H. gin, 63; 1 fancy buckett, 18	81		
"	"	21.	" Cash	20 00		
"	"	22.	" Acceptance in favor of S. P. Hoover	25 75		
"	"	23.	" 2 sugar boxes, 8–16, 2¾ lb. cl'd sugar, 14–39	55		
"	"	"	" 1½ lb. Java coffee, 17–25; 1 pa. pepper, 6	31		
"	"	"	" 1 box mustard, 13; 2 boxes palm soap, 50–1 00	1 13		
"	"	"	" 1 qt. jar pickles, 38; 1 bot. Irish whiskey, 1 50	1 88		
"	"	"	" 2 qt. cranberries	16		
						158 09
			Am't carried forw'd.			$272 81
53 1857			Am't bro't forw'd.			$272 81
	Jan'y	24.	To Cash	4 67		
	"	27.	" Cash as per receipt.	37 00		
Feb'y		2.	" 1 bot. whiskey, 75; 6 lb. a a candles, 30–180	2 55		
"		"	" Cash	20 77		
"		4.	" Order in favor of Lutz & Beall, 90 days	23 00		
"		5.	" 1 jar current jelly	1 00		
"		7.	" Cash per order	13 00		
						101 99
"		9.	" 2 bot. brandy, 2 00–4 00; 1 bot. H. gin, 75	4 75		
"		11.	" Cash for recording deed of trust	2 00		
"		"	" Part of order in favor J. C. Lewis	96		
"		27.	" Cash	10 00		

April	17.	To Telegraph dispatch to New York	1 00		
June	19.	" " " "	1 05		
"	"	" Cash as per cash statement rendered June, 12'57	241 03		
"	"	" Cash sight draft on New York.	50 00		
					310 19
"	29.	" Sight draft	150 00		
July	1.	" Cash	433 00		
"	28.	" Sight draft on New York	500 00		
Aug.	26.	" ⅔ advertising (1 mo. in Star) warehouse on 6th st	2 66		
					1,085 66
		Cr.			
Jan'y	15.	" By one 1½ gall. demijohn, 62		62	$1,771 25
"	27.	" By 2 mos. house rent, to Jan. 1st, '57	33 33		
"	"	" By 3 mos. store rent, up to Jan'y 1st, '57	166 67		
March	9.	" By cash of P. M. Dubant for house rent	25 00		
May	19.	" By ⅔ of $1,300 house and store rent to Ap. 1st, '57	216 67		
Sept.	11.	" By ⅔ of 1 mos. rent of John Reese, to Sept. 1st, '57	16 67		
54 Sept.	23.	" By ⅔ of $1,300 house and store rent to July 1st, '57	216 67		
"	"	" By part of note	942 00		
Oct.	15.	" By ⅔ of J. Reese house rent to Oct. 1, '51	16 66		
Dec'r	18.	" By ⅔ of 2 mos. store rent of John Reese to Dec. 1st, '57	33 33		
1858, Jan'y	6.	" By ⅔ of 2 mos. house rent of Jacob Wilson in full to Jan'y 1st, '58	33 54		
April	20.	" By ⅔ of 2 mos. house rent of Jacob Wilson in full to March 1st, '58	33 33		
Sept.	4.	" By ⅔ of $25 rent of John Reese	16 67		
Oct.	1.	" By ⅔ of 12 mos. of 1 qr. house and store rent, at $1,300 from July 1st, '57 to Oct. 1st, 1858, in full	1,083 34		
					2,834 30
		Same Dr			$1,063 05
		To notes of interest to Oct. 1st, '58			4,768 44
Oct.	1 '58.	Balance due to J. B. Wilson			$3,705 39

Filed April 4, 1865.

55 Supreme Court of the District of Columbia.

BENJAMIN H. CHEEVER
vs.
LOUIS AND ANNIE WORCESTER, *et al.* } In chancery.

1863, JUNE 17.

And now on this seventeenth day of June, A. D. 1863, the plaintiff, by his solicitor, Joseph H. Bradley, moves the court here that it be ordered that the matters of account between the parties be referred to the auditor to state and report the same to the court. And the same is hereby ordered, provided a copy of this order be served on the defendants on or before the 18th day of June aforesaid, and no cause to the contrary shown on or before the 24th day of June aforesaid.

(Ordered by the court, D. K. Carter, endorsed on above.)

WASHINGTON, . *C.*

On the 17th day of June, A. D. 1863, I gave in hand to Jesse B. Wilson, one of the defendants, a true copy of the within motion and order, at the same time exhibiting to him the original thereof, and on the 10th day of June aforesaid, I left with Mr. Carlisle, defendant's solicitor, a true copy of the same, who thereupon on the original endorsed acknowledgment of service, as will appear.

SAM. P. DINSMORE,
One of Plaint's Sols.

Endorsed: Sum acknowledged. Carlisle, 18 June. Motion and order, filed June 17, 1863.

56 In the Supreme Court of the Dist. of Col.

BENJAMIN H. CHEEVER
vs.
JESSE B. WILSON *et als.*, LOUIS AND ANNIE J. Worcester. } In chancery.

It appearing to the satisfaction of the court that due notice has been given to the defendants in the above-entitled cause of the order passed herein on the 17th day of June, inst., and no cause to the contrary having been shown:

The said cause is hereby, this 24th day of June, 1863, referred to Wm. Redin, esq., the auditor of this court, to state and report to this court the account between the defendant, and with the complainant, as set up in the answers the said defendants heretofore filed in this cause, for the further action of this court.

By order of the court.

D. K. CARTTER, *Ch'f Justice.*

Filed June 24, 1863.

57 Jesse B. Wilson,
In ac. with Mrs. Ann J. Cheever, Dr.

1857.

March 9th. By cash of P. M. Dubant for house rent on 6th street $25 00

Filed April 4, 1865.

Jesse B. Wilson,
In acc. with Mrs. Ann J. Hughes, Dr.

1857.

Sept.	11. By 2-3 of 1 mo. house rent of Jno. Reese on 6th street in full to Sept. 1st., 1857	16 67	
Oct.	15th. By 2-3 of 1 mo. house rent of Jno. Reese on 6th street in full to Oct. 1, '57	16 66	
"	21. By 2-3 of 1 mo. house rent of Jacob Wilson on 6th street in full to Oct. 1st, 1857	16 67	
Dec.	18th. By 2-3 of 2 mo. house rent of Jno. Reese on 6th street, in full to Dec'r 1st, 1857	33 33	

1858.

Jan'y	6. By 2-3 of 3 mos. house rent of Jacob Wilson on 6th street, in full to June 1st, 1858	50 00	
April	20. By 2-3 of 2 months house rent of Jacob Wilson on 6th street in full to March 1, 1858	33 33	
March	9. By 2-3 of $40 of Jno. Reese for house rent on 6th street on ac.	26 66	
August	2. By 2-3 of $25 of Jno. Reese for house rent on 6th street on ac.	16 66	$207 98

Jesse B. Wilson,
In ac. with Mrs. Anna J. Worcester, Dr.

1858.

Sep.	4. By 2-3 of $25 Jno. Reese for house rent on 6th street.		16 67
Nov.	2. By 2-3 of $100 of Jacob Wilson for house rent on 6th street in full to July 1st, 1858		66 67
58	Nov. 5. By 2-3 of $50 of Jacob Wilson for house rent on 6th street in full to September 1, 1858		33 34
Dec.	10. By 2-3 of $50 of Jacob Wilson for house rent on 6th street in full to Nov. 1, 1858.		33 34

Sept.	18.	By 2-3 of $79 65 of John Reese for house rent on 6th street on ac. of rent	53 10
Oct.	2.	By 2-3 of $20 of Jno. Reese for house rent on 6th street on account of rent	13 33
Nov.	8.	By 2-3 of $20 Jno. Reese for house rent on 6th street, on account of rent	13 34
Dec.	11.	By 4-3 of $50 of Jno. Reese for house rent on 6th street on ac. of rent	33 34
1859. Feb.	14.	By 2-3 of $50 of Jacob Wilson for hose rent on 6th street in full to Jan. 1, 1859.	33 33
Mar.	4.	By 2-3 of 29 17 of C. H. Munch for house rent on 6th street in full to March 1, 1859.	19 44
April	4.	By 2-3 of 65 35 of Jno. Reese for house rent on 6th street in full to Feb. 1st, 1859.	43 56
April	9.	By 2-3 of 29 17 of C. H. Munch for house rent on 6th street in full to April 1, 1859.	19 44
May	14.	By 2-3 of 29 17 of C. H. Munch for house rent on 6th street in full to May 1st, 1859	19 44
1860, Jan.	5.	By 2-3 of 141 50 of C. H. Munch for house rent on 6th street on ac. of rent	94 33
Mar.	6.	By 2-3 of $50 of C. H. Munch for house rent on 6th street on ac. of rent	33 33
59 1860, July	17.	By 2-3 of $118 of C. H. Munch for house rent on 6th street on acc't of rent.	78 67
Aug.	9.	By 2-3 of 23 of C. H. Munch for house rent on 6th street on ac. of rent	15 33
Oct.	17.	By 2-3 of $68 of C. H. Munch for house on 6th street on account of rent	45 33
Nov.	14.	By 2-3 of $30 of C. H. Munch for house on 6th street on ac. of rent	20 00
Feb.	23.	By 2-3 of $75 of C. H. Munch for house on 6th street on account of rent	50 00
1861, Mar.	11.	By 2-3 of $35 of C. H. Munch for house on 6th street on ac. of rent	23 33
Oct.	8.	By 2-3 of $301 24 of C. H. Munch for house on 6th street from March 11 to Oct. 8, 1861	200 82
Nov.	19.	By 2-3 of $25 of C. H. Munch for house rent on 6th st	16 67
June 3, '59.		By 2-3 of $38 of Jacob Wilson for house rent on 6th street on ac. of rent	25 33
July 16, '59.		By 2-3 of $37 of Jacob Wilson for house rent on 6th street on account of rent	24 67
Sept. 27, '59.		By 2-3 of $85 of Jacob Wilson for house rent on 6th street on ac. of rent	56 67
Dec. 4, '61.		By 2-3 of $32 68 of Jacob Wilson for house rent on 6th street on account of rent	21 78
1862, Jan. 20.		By 2-3 of $16 66 of Jacob Wilson for house rent on 6th street for December, 1861	11 11

60	1862. Jan. 20. By 2-3 of $25 of C. H. Munch for house rent on 6th street up to Jan'y 1, 1862.....	16 67
Feb.	7. By 2-3 of $16 66 of Jacob Wilson for house rent on 6th street up to Feb'y 1, 1862..	11 11
"	7. By 2-3 of $25 of C. H. Munch for house rent on 6th street up to Feb. 1st, '62...	16 67
March	4. By 2-3 of $25, C. H. Munch for house rent on 6th street up to March 1, '62.....	16 67
March	11. By 2-3 of $16 67, Jacob Wilson for house rent for house on 6th street up to March 1,	11 12
April	3. By 2-3 of $25 of C. H. Munch for house rent on 6th street up to April 1, '62.....	16 67
May	15. By 2-3 of $25 of C. H. Munch for house rent on 6th street up to May 1, 1862.....	16 66
June	7. By 2-3 of $25 of C. H. Munch for house rent on 6th street up to June 1, 1862.....	16 67
July	3. By 2-3 of $25 of C. H. Munch for house rent on 6th street up to July, 1862.....	16 66
July	29. By 2-3 of 33 33 of Jacob Wilson for house rent on 6th street up to July 1, '62....	22 22
Aug't	5. By 2-3 of 25 of C. H. Munch for house rent on 6th street up to Aug't 1, 1862.....	16 67
Sept.	2. By 2-3 of 25 of C. H. Munch for house rent on 6th street up to Aug't 1, '62.....	16 66
Oct.	8. By 2-3 of 25 of C. H. Munch for house rent on 6th street up to Oct. 1, '82.....	16 67
	Carry forward	$1,561 81
	1862. Am't bro't forw'd.....	$1,561 81
61	Nov. 5. By 2-3 of $66 67 of Jacob Wilson, for house rent, on 6th street, from July to Nov. 1, '62, in full	44 45
Nov.	5. By 2-3 of $25 of C. H. Munch, for house rent, on 6th street, up to Nov. 1, 62...	16 67
Dec.	4. By 2-3 of $25 of C. H. Munch, for house rent, on 6th street, up to Dec. 1, '62.	16 66
1863.	Jan. 1. By 2-3 of $33 33 of Jacob Wilson, for house rent, on 6th street, up to Jan'y 1, '63, in full	22 22
Jan.	1. By 2-3 of $25 of C. H. Munch, for house rent, on 6th street, up to Jan'y 1, '63..	16 66
Feb.	1. By 2-3 of $25 of C. H. Munch, for house rent, on 6th street, up to Feb'y 1, '63..	16 67
March	1. By 2-3 of $25 of C. H. Munch, for house rent, on 6th street, up to March 1, '63	16 66
April	2. By 2-3 of $25 of C. H. Munch, for house rent, on 6th street, up to April 1, '63.	16 67

Sept.	5. By 2-3 of $50 of Jacob Wilson, for house rent, on 6th street, from Jan'y 16 to April 1, '63, in full.....		33 33
			$1,761 80
	To commission on $1,761 80 @ 10 per cent.....		176 18
			$1,585 62

Filed April 4, 1865.

62 Supreme Court of the District of Columbia.

Order to examine defendant, A. J. Worcester.

CHEEVER
vs.
WILSON, WORCESTER *et al.*

On motion of the solicitor for the defendant, Jesse B. Wilson, it is by the court this fourth day of November, A. D. 1863, ordered, that the said defendant have leave to examine his co-defendant Annie I. Worcester, before one of the commissioners of this court or under a commission, or before any justice of the peace agreed upon by the parties to this cause.

By order of the court.

Filed Nov. 4, 1863.

In the Supreme Court of the Dist. of Columbia.

Interrogations for defendant, witness.

BENJ. H. CHEEVER
vs.
LOUIS WORCESTER and ANNIE I. WORCESTER. } In equity.

1. Examine the accounts of Jesse B. Wilson against you hereto annexed, marked W. 1. & W. 2, and state whether they are
63 a true and correct account of moneys advanced you and paid out on your account, and of goods, wares, and merchandise sold you by the said Jesse B. Wilson.

2. State whether said moneys were advanced and paid and said goods and merchandise furnished on the credit of your separate estate, and with any understanding that the amounts due therefor should be paid out of said estate.

3. State whether any and what agreement as to making you such advances of money or merchandise was made by Jesse Wilson in connexion with the renewal of his lease in July, 1857.

4. Look at the paper hereto annexed, marked W. 3, and state whether you executed and delivered to said Jesse B. Wilson a paper of which it is a copy.

5. Look at the paper hereto annexed and marked W. 4, and state whether you and your late husband executed and delivered the same to said Wilson at the time it bears date.

6. Do you know or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in
64 this cause or either of them, or that may be material to the subject of this your examination or the matters in question in this cause? If yea, set forth the same fully and at large in your answers.

U. S. COX, *Sol'r for Def'ts.*

Commissioner ENOCH P. BREED, 5 *Beekman st., N. Y.*

Filed Nov. 5, 1863.

65 W. 1.

WASHINGTON, D. C.

Mrs. Ann J. Cheever,

To Jesse B. Wilson, Dr.

1856.			
Nov.	15th.	To 1 bot. brandy	2 00
"	27.	" 1 bot. gin, 63; 1 box soap, 50; 1 box mustard, 12	1 25
Dec.	1.	" Repairing window blinds per J. Angus' bill	50
"	29.	" 6 lb. ad. candles. 18c; 1 gall. E. oil, 1 00—2 87;	
"	"	" 5 lb. soap, 45; 1 lb. starch, 13; 1 lb. pecan, 20—78;	
"	"	" 1 set table mats, 62; 1 lb. pat. 3 candles, 6—1 22.....	4 87
"	30	" 1 pt. brandy, 75; 1 pt. Jam. spirits, 37.....	1 12
"	31.	" 2 lbs. sugar crackers	25
1857.			
Jan'y	3.	" 2 gals. cider, 75; 1 gal. demijohn, 50; 1½ gal. demijohn, 62	1 87
"	6.	" Cash for draft	100 00
"	"	" 1 pint Irish whiskey, 38; 1 soda crackers, 10.....	48
"	12.	" 1 bot. brandy	2 00
"	15.	" 1 gall. cider.....	38
"	16.	" Cash on store & house rent 30 00;	
"	"	" Acceptance in fav. of S. Parker, 14.87	44 87
"	17.	" Acceptance in fav. W. M. Shuster & C., *a* 65 days.....	62 63
"	20.	" 1 bot. H. gin, 63; 1 fancy bucket, 18	81

Jan'y	21.	To Cash on store and house rent....	20 00		
"	22.	" Acceptance in fav. S. P. Hoover	25 75		
"	23.	" 2 sugar boxes, 16; 2¾ cl'd sugar, 39—55;			
"	"	" 1½ jar coffee, 25; 1 fr. pepper, 6—31;			
"	"	" 1 box mustard, 13; 2 boxes palm soap, 1 00—1 13;			
"	"	" 1 qr. jar pickles, 38; 1 bot. Irish whiskey, 1 50—1 88;			
"	"	" 1 q. cranberries, 16.....	4 03		
"	24.	" 2-3 of C. Edmonston's bill for cellar steps	4 67		
66	Jany.	27. To Cash as per receipt.....	37 00		
	Feb.	2. " 1 bot. whiskey, 75; 6 lb. ada. candles, 1 84	2 53		
"	"	" Cash to settle store and house rent to Jan'y 1,'57.....	20 77		
"	4.	" Order in fav. Lutz & Beall *a* 90 days	23 00		
"	5.	" 1 jar currant jelly.....	1 00		
"	7.	" Cash per order.....	13 00		
"	9.	" 2 bots. brandy, 4 00; 1 bot. H. gin, 75	4 75		
"	11.	" Cash pd. for recording deed of trust, 2 00;			
"	"	" Part of order in favor of J. C. Lewis, 96.....	2 96		
"	27.	" Cash to L. Worcester.....	10 00		
April	19.	" Cash pd. telegraph despatch to New York.....	1 00		
					393 51
June	19.	" Telegraph dispatch, 1 05;			
"	"	" Cash as per cash statement, rec'd June 12, '57, 241 03;			
"	"	" Cash sight draft on N. York, 50 00	292 08		
"	29.	" Sight on New York	150 00		
July	1.	" Cash for house and store rent..	433 00	Error.	
"	28.	" Sight draft on New York	500 00		
Aug.	26.	" 1-3 advertising 1 mo. in Star warehouse for rent	2 66		
					1,377 74
		Same Cr.	Cash		$1,771 25
		By error in ch'g, July 1, '57, for house and store rent			433 00
					$1,338 25

DISTRICT OF COLUMBIA, *Washington County, to wit:*

On the 6th day of November, A. D. 1863, before me, the subscriber, one of the justices of the peace in and for the aforesaid county,
67 personally appeared Jesse B. Wilson and John O. Williams, clerk and bookkeeper for Jesse B. Williams, and made oath on the Holy Evangely of Almighty God that the within account is just and true, and that they hath not directly or indirectly, to their knowledge, received any part or parcel of the money charged as due by such accounts nor any security or satisfaction for the same.

Sworn to before me this day and year aforesaid.

[SEAL.] EDGAR H. BATES, *J. P.*

[5-ct. int. rev.]

This is the paper, exhibit, or document referred to by Anna J. Worcester, in her examination, as the paper marked W. 1.

E. P. BREED.

[5-ct. int. rev.]

68 W. 2.

Mrs. Ann J. Worcester,

To J. B. Wilson, Dr.

Date.			
Aug't 1st, '56.	Note *a* one year at int		$200 00
" " "	Up to		
Nov. 26, '56.	Note at int		1,000 00
" " "	Up to		
Nov. 20, '56.	Note *a* 1 year at int		100 00
" " "	Up to		
Dec. 26, '56.	Note *a* 1 year at int		100 00
" " "	Up to		
Jan'y 17, '57.	Note *a* year at int		100 00
" " "	Up to		
July 28, '57.	Note *a* 1 year at int		2,412 60
" " "	Up to		
Aug't 1, '57.	Note *a* 1 year at int		1,000 00
" " "	Up to		
Nov. 29, '58.	Note *a* 6 months at int		50 00
" " "	Up to		
Dec. 11, '58.	Note *a* 1 year at int		954 00
" " "	Up to		
June 15, '59.	Note *a* 1 year at int		100 00
" " "	Up to		
Aug't 1, '59.	Note *a* 1 year at int		100 00
" " "	Up to		
June 11, '60.	Note on demand at int		220 00
" " "	Up to		
Aug. 15, '60.	Note at int		220 00
" " "	Up to		
Oct. 15, '62.	By cash on note dated Aug't 15, '60,		176 44

69 W. 2.

W. 2. WASHINGTON, D. C.

Mrs. Ann J. Worcester

To Jesse B. Wilson. Dr.

1858.			
Aug.	27.	To 2-3 of taxes on property for 1858	$74 43
Sep.	22.	" 2-3 of J. T. Linch's bill	67
Dec.	4.	" Cash to J. C. Lewis for premium of life insurance on policy No. 4,351	29 26
"	10.	" Cash pd. telegraph despatch	28
	13.	" Expenses to Baltimore	4 00
1859.			
Jan.	31.	" Cash to Etna Ins. Office, 2-3 of $14	9 33
Feb.	23.	" Cash d'd to Carlisle & Maury for preparing lease dated Dec. 30th, '58	10 00
Mar.	10.	" Cash pd. T. Jno. Hanson, insurance on 6th street property, 2-3 of $8 00	5 33
May	17.	" 2-3 of taxes on sewer on 6th street	13 33
June	17.	" Cash pd. J. C. Lewis on life policy No. 12,929.	40 00
"	"	" Cash pd. J. C. Lewis on life policy No. 4,351	22 00
July	9.	" Cash pd. draft $100 00, protest 1 15	101 75
Aug.	31.	" Cash pd. 2-3 taxes of S. T. & J. Hughes	72 18
Dec.	7.	" Cash pd. J. C. Lewis' premium on policy No. 4,351	51 26
1860.			
Jan'y	28.	" Cash dd. 2-3 for premium on policy No. 2,082	9 33
Mar.	10.	" 2-3 of $8 00 pd. to J. M. Hanson for premium on policy No. 2,091	5 33
July	16.	" Cash pd. to C. H. Munch	20 33
Dec.	5.	" Cash pd. J. C. Lewis on life policy No. 4,351	51 26
1861.			
Jan'y	10.	" 2-3 of $123 46 for taxes for 1860	82 30
		" 2-3 of E. F. bill, Dec. 19, '60, of 2 56.	1 67
70 July	20.	" 2-3 of $1,400 pd. F. M. Hanson on ins. policy, No. 2,082	9 34
Mar.	11.	" 2-3 of $8 00 premium on policy No. 2,091	5 33
Oct.	3.	" 2-3 of $75 98 of tax bill for 1861	50 65
Dec.	5.	" Cash pd. J. C. Lewis for policy No. 4,351	51 26
1862.			
Feby.	15.	" 2-3 of 14 00 pd. for ins. of policy No. 2,082	9 33

Mar.	8.	To 2-3 of 8 00 pd. for insurance No. 5,833 by policy No. 2,091	5 33
"	26.	" 2-3 of $85 00 pd. Chas. Edmonston's bill for work 1859, as per bill of C. E., Jan. 1, '60	56 67
			$791 95

Filed Nov. 5, 1863.

Mrs. Ann J. Worcester

To J. B. Wilson Dr.

To amt. of Mrs. Ann J. Cheever's bill from Nov. 13, '56, to Augt. 27, '57	$1,338 25
" Amt. of Mrs. Ann J. Hughes's bill from Sept. 11th, 1857, to March 3, 1858	231 37
" Amt. of Mrs. Ann J. Worcester's bill from Augt. 27, 1858, to March 26, 1862	791 95

WASHINGTON, D. C.

Mrs. Ann J. Cheever

To Jesse B. Wilson Dr.

To amt. of bill of items rend'd from Nov. 13, 1856, to Aug't 26, 1857, inclusive. (See court proceedings.)	$1,771 25
By error in ch. July, 1857, per cash for house and store rent	433 00
	$1,338 25

71 WASHINGTON, D. C.

Mrs. Ann J. Hughes

To Jess B. Wilson Dr.

1857.			
Sept.	11.	To 2-3 of Berry & Co., bill for repairing roof, guttering, &c	$10 88
"	23.	" ½ rope 30 ct., to cash $126 00 sundry expenses $28 50	148 80
Oct.	9.	" Order in favor J. C. Lewis	16 85
Nov.	25.	" 2-3 of $21 50 for paving on 6th street	14 33
Dec.	2.	" premium on ins. policy cash to J. C. Lewis	29 26
1858.			
Jan'y	22.	" cash to Mrs. S. T. Hughes to pay insurance on property	10 00
Mar.	3.	" recording lease in fav. J. Wilson, (date July,' 51)	1 25

W. 3.

(This is the paper, exhibit, or document referred to by Annie J. Worcester in her examination, also as the paper marked W. 3.—E. P. Breed.)

I do hereby assign, transfer, and set over unto J. B. Wilson, esq., for value received, all my rents, sum or sums of money, interests benefits, and advantage whatsoever, now due, or hereafter to arise, or to be had or made by virtue thereof, to have and to hold, until he should have received the sum of two thousand dollars, also one hundred and eighty dollars in note of hand given this day.

A. J. CHEEVER.

Washington City, Feb'y 11, 1857.

Witness: H. BARRETT.

72 W. 4.

$3,000.

(This is the paper, exhibit, or document referred to by Annie J. Worcester in her examination as the paper marked W. 4.—E. P. Breed.)

BALTIMORE, 11*th December*, 1858.

I do hereby assign, transfer, and set over unto J. B. Wilson, esq., for value received, or his assigns, all my rents, sum or sums of money, interests, benefits or advantages whatsoever, now due or hereafter to arise or to be had or made by virtue thereof, to have and to hold until he shall have received the sum of three thousand dollars.

ANNIE J. WORCESTER.
LOUIS WORCESTER.

Filed Nov. 5, 1863.

In the Supreme Court of the District of Columbia.

Interrogatories for complainant's witnesses.—Filed Jan'y 18, 1864.

BENJ. H. CHEEVER
vs.
LOUIS WORCESTER and ANNIE J. WORCESTER. } 1,398, Equity.

Interrogatories for defendant, Annie J. Worcester, to be examined as a witness for defendant, Jessee B. Wilson:

1. Examine the accounts of Jessee B. Wilson with you hereto
73 annexed, marked W. 1 and W. 2, and state whether they are a true and correct account of monies advanced you, and paid out in your account, and of goods, wares and merchandize sold you by said Jesse B. Wilson.

2. State whether said moneys were advanced and paid, and said goods and merchandise furnished in the credit of your seperate estate, and with any understanding that the amounts due therefor should be paid out of said estate.

3. State whether any, and what agreement as to making you such advances of money or merchandise was made by Jesse B. Wilson, in connection with the renewal of his lease in July, 1857.

4. Look at the paper hereto annexed, marked W. 3, and state whether you executed, and delivered to said Jesse B. Wilson said paper.

5. Look at the paper hereto annexed, and marked W. 4, and state whether you and your late husband executed and delivered the same to said Wilson, at the time it bears date.

6. Do you know, or can you set forth any other matter or thing which may be a benefit or advantage to the parties at issue in
74 this cause, or either of them, or that may be material to the subject of this your examination, or the matters in question in this cause? If yea set forth the same fully and at large in your answer.

W. S. COX,
Sol'r for the Defendant.

Commissioner Enoch P. Breed, 5 Beekman, st., N. Y.

Commission.

DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Enoch P. Breed, No. 5 Beekman st., N. Y:

Know ye, that you are appointed commissioner to examine evidences in a cause depending in the Circuit Court for the county of Washington, in the District of Columbia, between Benjamin H. Cheever, compl't, and Louis & Annie J. Worcester & Jessee B. Wilson, def't.

Therefore, you are requested, having first taken the oath
75 hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant, and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and that you cause notice to be given to the parties, or their attornies, of the execution of this commission before you execute the same; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission closed under your hand and seal, to the judges of the said Circuit Court, with all convenient speed.

Witness the Honorable D. K. Cartter. esq., chief judge of the said court, the 7th day of July, in the year of our Lord one thousand eight hundred and sixty-four. Issued the seventh day of July, 1864.

[SEAL.] RETURN J. MEIGS, *Clerk, &c.*

75 *Commissioner's oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examination and depositions of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties. So help me God.

E. P. BREED.

The above oath was administered by me to Enoch P. Breed, commissioner within named, and he was sworn before me, at City of New York, this 11th day of July, 1864.

W. S. PINCKNEY,
Not. Public, City of N. Y.

The execution of this commission appears in a certain schedule hereto annexed.

E. P. BREED, *Commissioner.*

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either parties in this cause, take, write down and transcribe the depositions of all and every the witnes and witnesses produced before and examined by the commissioner named in the commission hereto annexed, as far forth as you are directed and employed by the said commissioners to take, write down and transcribe the said depositions, or any of them. So help me God.

No. 14.—*Filed April* 4, 1865.

76 At the execution of the annexed commission issued out of the Supreme Court for the District of Columbia, and to me directed, and empowering me to examine evidences in the cause depending in said court between Benjamin H. Cheever as plaintiff, and Louis and Annie J. Worcester and Jesse B. Wilson, I, Enoch P. Breed, commissioner therein named, having taken before Walter S. Pinckney a notary public for the city and county of New York, in the State of New York, duly commissioned and qualified, the oath annexed to the said commission on the 11th day of July, 1864, and having given notice to the attorneys for the respective parties, did then and there, to wit, on the twelfth day of July, in the year 1864, at my office, No. 5 Beekman street, in said city of New York, proceed to take the following deposition, to wit:

Annie J. Worcester, a witness of lawful age, produced on the part of the defendant, Jesse B. Wilson, being duly sworn and examined on the interrogatories herewith returned, deposes and says:

77 To the first interrogatory. That the accounts of Jesse B.

Wilson with her, hereto annexed, and marked "W. 1" and "W. 2," are a true and correct account of moneys advanced her and paid out on her account, and of goods, wares and merchandize sold her by said Jesse B. Wilson.

To the second interrogatory. That said moneys were advanced and paid, and said goods and merchandize furnished on the credit of her separate estate, and with the understanding that the amounts due therefor should be paid out of said estate.

To the third interrogatory. That an agreement as to making her such advances of money or merchandize was made by Jesse B. Wilson in connection with the renewal of his lease, in July, 1857. That in July, 1857, Jesse B. Wilson agreed to make such advances of money or merchandize upon condition that she should renew his lease at that time, and it was agreed that Jesse B. Wilson should advance to her,
78 and that she should have, money and merchandize as she wanted them. And it was fully and plainly agreed that she should give up all her rents in Washington to said Jesse B. Wilson, for the purpose of paying the indebtedness that would accrue for said advances to her.

To the fourth interrogatory. That she executed and delivered to said Jesse B. Wilson the paper hereto annexed marked "W. 3."

To the fifth interrogatory. That she and her late husband executed and delivered to said Jesse B. Wilson the paper hereto annexed, marked "W. 4," at the time it bears date.

To the sixth interrogatory. That she does not know and cannot state anything further.

ANNIE J. WORCESTER.

E. P. BREED, *Commissioner.*

There being no other witnesses to be examined, the commissioner closed the said commission, and herewith returns the same under his hand and seal this twelfth (12th) day of July, 1864.

[SEAL.] E. P. BREED,
Commissioner.

79 No. 15.—*Order to issue commission to take testimony.—Filed Jan'y* 18, 1864.

CHEEVER *vs.* WILSON *et al.* } No. 1,398.—Chancery.

On motion of the solicitor for the defendant, Jesse B. Wilson, it is this 18th day of January, A. D. 1864, ordered that a commission issue to Enoch B. Breed, of New York, to take the testimony of Annie J. Worcester, in behalf of said defendant.

By order of court:

D. K. CARTTER,
Ch'f Justice.

Supreme Court of the District of Columbia.

No. 16.—*Order to rescind and vacate.—Filed Jan'y* 25, 1864.

CHEEVER
vs.
WORCESTER and JESSE B. WILSON. } In chancery.—No 1,398.

On motion of solicitor for plaintiff, it is by the Court at Chambers, on this twenty-fifth day of January, A. D. 1864, ordered, that the order of this court made on the fourth day of November, A. D. 1863, that the defendant, Jessee B. Wilson, have leave to examine as a witness in this cause his co-defendant, Annie J. Worcester, be, and the same is hereby vacated and rescinded.

By order of—

ANDREW WYLIE, *Justice.*

No. 17.

80 CHEEVER
vs.
WORCESTER *et al.* } 1,398.

The defendant, J. B. Wilson, by his solicitor, moved the court to rescind the order of January 25th, rescinding a prior order giving the said defendant leave to take the deposition of his co-defendant, Annie J. Worcester.

WALTER S. COX, *Sol.*

No. 18.—*Filed March* 7, 1864.

BENJ'N H. CHEEVER
vs.
JESSE B. WILSON *et al.* } 1,398.—Equity.

On motion of solicitor for defendant, and after argument, it is in the court, this 2nd day of March, 1864, ordered, that the order passed in this cause on the 5th day of January last, to rescind a previous order to allow the defendant, Annie J. Worcester, to be examined asa witness for her co-defendant, Jesse B. Wilson, be,
81 and it hereby is, rescinded, as of date 2d of February last.

By order of the court.

No. 20.—*Auditor's report.—Filed April* 4, 1865.

BENJ. H. CHEEVER
agt.
ANNIE J. WORCESTER and
Jesse B. Wilson. } No. 1,398.—Equity docket, 5.

The claim of the plaintiff in this cause is for a third of the share or income of his late wife, the defendant, Mrs. Worcester, in the rents

accruing from her property in this city, and is made against the other defendant, Wilson, as tenant of part of the property, and as her agent and assignee in the collection of the rents of the other part.

The property was her maiden property, and upon her marriage with the complainant was settled to her separate and exclusive use for her life; and upon the divorse between them, pronounced by a court in Indiana, the third of her income therefrom was decreed to be paid to the complainant for the benefit of such of the children of the marriage as should be in his custody while they remained infants, of whom there were four, the three oldest being then with the complainant, and the youngest with the mother. The decree, as to the property and custody of the children, appears to have been
82 by consent of both parties.

After the divorce the defendant married Louis Worcester, who is now dead.

The property out of which the income arose consisted of a dwelling-house and store on Pennsylvania avenue, and two smaller houses on Sixth street, in square B. The defendant, Wilson, was tenant of the avenue property, under leases granted by the other defendant after her marriage with the complainant; two of them while she was Mrs. Cheever, and one after she became Mrs. Worcester; and he was her agent and assignees for the collection of the rents of the Sixth street houses.

The defendant, Wilson, objects to paying the third of the income claimed by the complainant, chiefly on the ground that before the divorce, or before he had notice thereof, he had made advances to Mrs. Cheever, in anticipation of the rents, upon previous assignments and pledges of the same, and upon the faith of being repaid thereout; and that such advances, as he alleges, greatly exceed the rents that have accrued and came to his hands, leaving a balance in his favor, and nothing to be paid by him to the complainant.

The case was referred to me in June, 1863, with no rulings
83 or any instruction, other than the general one to state "the matters of account between the parties." The papers then in the cause were the bill and answers, the first and second leases, the record of the divorce, the assignment of the third of the rents to the complainant by his late wife, two assignments of the rents to the def't, Wilson, one of the 11th Feb'y, '57, and the other of 30th Dec., '58, and one account of the defendant, W. No. 3, but no replication. There has been much delay, owing in part to my own accident and subsequent sickness, but chiefly to the difficulty of obtaining Mrs. Worcester's testimony. Her deposition has been twice taken in New York, and on both occasions irregularly taken. She appeared before me in February last in person, when her deposition was finally taken. The deposition of the defendant, Wilson, was also then taken. The papers which have been filed with me pending the reference are (by the complainant) the marriage settlement, and the correspondence respecting the rebuilding of the present store rooms by the defendant, Wilson, after the destruction of the former buildings by fire, and by the defendant, Wilson, the will of the late Thos.

84 Hughes, the father of Mrs. Worcester, (on my call,) the third lease, and three other accounts of the defendant, Wilson. The depositions of Messrs. Wall, Fisher, Munch, Kennedy, Jas. Wilson, and Simms, have been taken by the complainant, and of John O. Williams, by the defendant, Wilson. The complainant has also given his own deposition. All are returned herewith. By this course of proceeding I now understand the reference to be on bill, answers, general replication, and depositions. Mrs. Worcester was offered as a witness on behalf of the other defendant, Wilson, and was examined pursuant to the order of the court of the 4th November, 1863, and under the act of Congress of the 2d July, 1864. Mr. Wilson deposed on his own behalf, as did the complainant, under that act.

Messrs. Bradley, Dinsmore & Carwin, for the complainant, and Mr. Cox for the defendant, Wilson, have attended the reference; one or other of these gentlemen, and sometimes all, being present at each meeting. The comp't and defendant, Wilson, have also been present.

It was agreed before me by Mr. Cox for the defend't, Wil-
85 son, and by Mr. Dinsmore, for the complainant, that the account should not be limited to the time of filing the bill, but extended to the date of this report. It was also agreed by them that the four children of the marriage are living, and, except Thomas, one of them, are still minors, and three with the complainant and one with Mrs. Worcester.

The following is a brief statement of the facts, in the order of date in which they occurred:

H. 1.—*Copy.*

Thos. Hughes, the father of Mrs. Worcester, by his will dated , devised the property in question to his wife, Sarah Hughes, and son, Jas. Hughes, in fee, in trust to be conveyed to said Sarah, in trust for the sole and separate use of his said daughter, her heirs and assigns, until said Sarah should see fit to convey the same to her.

Jas. Hughes, by deed of the 10th March, 1840, conveyed his interest in said property to Sarah Hughes, upon the trusts of the will.

H. 2.—*Copy.*

In 1842, the complainant and defendant, Annie, inter-
86 married, and a settlement dated the 6th Sept., 1842, was executed, which, after reciting the will of Thos. Hughes, states the object of the settlement to be to make "a secure and permanent provision for said Anna," and vests the said property in said Sarah Hughes in trust, to suffer and permit said Annie to receive, take, and enjoy the rents, issues, and profits of said premises to her sole and exclusive use and benefit, free from the control of the complainant, and from liability for his debts, during her life; and after her death, in trust to the use of any child or children of said Annie, by the complainant; and, if none, to permit her to dispose of the same by will."

H. 3.

On the 10th Sept., 1855, Mrs. Hughes and Mrs. Cheever executed a lease to the defendant, Wilson, of the Avenue property, for five years from the 1st Oct., 1855, at $1,300 a year, $250 to be paid quarterly for the store, and $25 monthly for the dwelling house.

This lease contains a covenant on the part of the defend't, Wilson, to make all necessary repairs upon the dwelling house, and to keep it in good order.

H. 4.

87 On the 26th Nov'r, 1856, they executed a deed, which refers to the lease, to Carlisle and Maury, of said premises, to secure to said defendant, Wilson, the sum of $700, for which he was then under advance to said defendant, Annie, and further advances to be made, not exceeding $1,000, including said $700, and with authority for said defendant, Wilson, after the 1st Oct., 1857, to retain the rents, as they should fall due, and apply the same to said indebtedness, until paid.

W. 3.—*In N. York deposition.*

And on the 11th Feb'y, 1857, the defendant, Annie, executed the paper marked W. 3, purporting to assign all her rents, &c., then and thereafter to become due, unto said defendant, Wilson, until he should have received $2,000, and $180, by note given that day.

H. 5.

A further lease was granted by Mrs. Hughes and Mrs. Cheever to the defendant, Wilson, on the 16th July, 1857, of the same Avenue premises, for a further term of five years, to commence from the 1st Oct., 1860, at the same rent of $1,300, to be paid as expressed in the first lease.

In this lease there is a covenant by the defendant, Wilson, to pay the rent during the term.

88 H. 6.

In June, 1857, the defendant, Annie, presented a petition to the court of Marion county, Indiana, for a divorce, to which the complainant, by his answer, assented; and on the 26th Aug't, 1857, the Madison Circuit Court (to which the proceedings had been removed) pronounced a decree a vinculo matrimonii between them, and she was to assume her maiden name; and upon their agreement, it was further decreed that she should have the care of the youngest child, and he of the other three; that he should take her Tehauntepec stock; and that "as natural guardian of the children placed in his custody, and while they remained infants, he should receive for their use, support, education, and maintenance, the one-third part of the rents and profits of said property that would be coming to her in her own right, as the same should thereafter become due, during

her life, and she should receive the other two-thirds during her life; and after the said infant should become of age, they should receive their pro rata share of the said third of said rents, and at her death, the said property, in fee simple; and said Annie was directed to execute to said complainant a sufficient authority or power to
89 receive said rents for the purposes aforesaid."

H. 7.

She executed the paper (of which H. 7 is admitted by Mr. Densmore to be a copy, and which was filed with her answer) on the 27th of August, 1857, in obedience, as it states, to said decree, which purports to assign to said complainant the Tehauntepec stock for his own use, and to authorize him to collect the one-third of said rents that should accrue to her, and as the same should accrue, for the use of such of their children as might be in his custody, during her life, to which, before executing said paper, she added this sentence: "This assignment of rents is subject to an incumbrance upon said rents to my agent, Jesse B. Wilson, of about $5,000."

Her interest in the rents of the date of the decree was two-thirds, in present enjoyment, and the reversion of the remaining third expectant upon the death of her mother, who received that portion of the rents for her dower, as stated in the bill.

Notice of the divorce was given to the defendant, Wilson, soon after it occurred. Mrs. Cheever sent him a copy of the de-
90 cree. [Mrs. Cheever sent him a copy of the decree.] The witness, Kennedy, on behalf of the complainant, in Oct., 1857, presented and read a copy to him, and it appears from the defendant's ledger, L. p. 494, that he knew of it at an earlier period, the word "divorced" being entered by him in the account against Mrs. Cheever between the items of the 26th Aug't, '57, and 11th September, '57; a copy of that account from his ledger is appended to this report.

He did not, however, recognize the complainant's claim, but continued, after the divorce as before, to make payments to the defendant, Annie, and carried the full two-thirds of the rents subsequently accruing, up to the fire of '62, to her credit. He has never paid anything to the complainant.

W. 4.—*In N. York deposition.*

On the 11th Dec'r, 1858, he took from her and her new husband, Worcester, the paper W. 4, which purports to assign her rents due or thereafter to arise, until he should have received $3,000.

And on the 30th December, 1858, he obtained an extension of his lease on the Avenue property from Mrs. Hughes and L. Worcester and his wife, which recites the two former leases, and grants
91 a term of ten years, to commence from the 1st Oct., 1860, being the termination of the first lease, and an extension of five years from the expiration of the second, at the same rent of $1,300, payable quarterly, and took a second assignment of the rents from Mr. and Mrs. Worcester.

This lease contains a covenant on the part of the lessors to keep the buildings in repair during the term, and a proviso that if they should be partially or totally destroyed by fire the rent should partially or wholly cease, until the lessors should rebuild or restore them.

The buildings were totally destroyed by fire in April, 1862.

They were insured for $4,000, in the name of Mrs. Hughes, which amount she received from the insurance co.

H. 8.

She and Worcester and wife did not rebuild, and the defendant, Wilson, after addressing to Mrs. Hughes the letter H. 3, of the 14th May, 1862, erected the present storehouse, at a cost to himself of $4,035 29, which he continues to occupy to this date, but refuses to pay, and has not in fact paid, any rent to any one since the fire of 1862.

92 Mrs. Hughs died on the 12th of April, 1863, and on the 22d October, 1863, the defendant, Wilson, and Mrs. Worcester, (her second husband being then dead,) came to a settlement of accounts, in which he charged her with all the advances made by him prior to the decree and all his payments since to the period of the fire, and credited her with two-thirds of the rent of the Avenue property to that time, and of his collections from the Sixth street property to the date of settlement, and upon that settlement she fell in his debt $3,290 00.

He ceased to be her agent for collecting the Sixth street rents from the time of that settlement, and relinquished his assignment thereof.

And he then gave up to her all the notes he had taken from her at the times his advances were made, and also the notes given by her to secure advances past and prospective. She deeming these, as she states, of no further use, destroyed them in December, 1864, in New York, where she was then residing.

Among these notes were two, one for $2,412 60, dated the 28th July, 1857, and the other for $1,000, dated the 1st Aug't,

93 1857, which Mr. Wilson and Mrs. Worcester state were given by her to cover advances then made, and thereafter to be made, to the extent of the notes. In consequence of Mr. Wilson having made no entries in his books of the sums advanced for which Mrs. Worcester's notes were taken at the time of the advance, as well as in consequence of the destruction of the notes, they were both unable to state how much was advanced before and how much after the date of these two notes, and therefore uncertainty as to the precise periods of the advances; but they both state that the whole (except $912, to be credited upon one of the notes) was advanced either before the date of the notes or within ten or twenty days afterwards. I deem it improper to attempt any abridgment of the testimony upon this part of the case; so much only has been stated as was deemed necessary to render the matter intelligible, and for greater cretainty I refer to the answers of the parties to the interrogatories and cross-interrogatories put to them on this subject. See Mr. Wilson's ans-

wers to cross-interrogatories No. 16, 18, 21, 24, 25, and 17,
94 18, 19, and 20 re-direct interrogatories; also, Mrs. Worcester's answers to interrogatories in chief No. 2, 7, 10, and cross-interrogatories 4, 7, 9, and 15, and re-direct 18 and 19.

And in this connection I refer also to Mr. Kennedy's testimony, who states that when he gave the defendant Wilson notice of the decree in Oct., 1857, he stated his advances at from $1,800 to $2,000, not exceeding the latter sum. See his testimony at pages 4 and 33 of the depositions.

The bill was filed the 21st January, 1858, and seeks a specific performance of the Indiana decree against the defendant Wilson as to the portion of the rents allotted or assigned to the compl't for the children.

The complainant, in the bill, claims by virtue of that decree one-third of the defendant Annie's interest in her own right in the rents, (which at that time was two-thirds,) from the date of the divorce, viz: the 26th Aug't, 1857, to the present time; and he claims further,
in the argument of his counsel, one-third of the third of the
95 income which Mrs. Hughes, while living, enjoyed for her dower, and which, upon her death, came to the defendant Annie subsequent to the decree and her assignment to the complainant. And he objects that she had no right or authority under the marriage settlement, during the marriage, to grant leases or to grant a second and third lease before the first and second had expired; nor to anticipate the rents; or, if the settlement gave her such power, the anticipation was not made in due form; or the advances did not amount to the sum claimed by the defendant Wilson, or exceed the sum stated by the witness Kennedy; that there was no record of the incumbrances, and he had no notice in fact of the leases or of the advancements; that a greater amount of the rents for the Sixth street property was received than is accounted for by the defendant; and that whatever may be the true amount of his advances, it must be repaid out of her portion of the two-thirds of the rents, and not by
the third thereof decreed and assigned to him; that he is not
96 bound at all by the third lease; nor, as to the rate of rent, by the first and second leases, but is entitled to a fair and reasonable rent for the avenue property. And further, that if complainant's third be taken to pay the defendant's advances, he should be subrogated therefor to the defendant's claim upon the residue of the rents coming to the defendant Annie.

The defendant Wilson contends that the Indiana decree, if valid, cannot operate upon the property here, or on him as to these rents; that the defendant Annie made no assignment of the rents to the complainant, in compliance with the decree; or, if she did, the defendant Wilson was never notified thereof; and, in either case, complainant's remedy was against her and not against him; that she could lease, and could anticipate the rents; that if the complainant acquired any rights through the decree in the rents, defendant is entitled to be repaid the whole of his advances made to her prior to notice to him of the divorce and decree, by the application, not only of

97 her share of the rents, but of the complainant's also; that he took subject to the defendant's claim, and was to receive one-third of what was coming to the defendant Annie; that nothing was coming to her until the advances were repaid; and therefore the complainant's right to receive did not arise or commence until then; and there can be no subrogation for anything between the date of the decree of divorse and the actual payment of the advances; that the complainant never made any such claim, but permitted the defendant to pay Mrs. Worcester the rents that accrued subsequent to the payment of his advances; that he has no just claim upon the defendant for any part of the rents of the Sixth street property; that the amount of his said advances exceeds the rents; and that he is not liable to the lessors or the complainant for any rent of the Avenue property after the fire in 1862, and the refusal of the lessors to rebuild; nor to any greater rent than the rate stipulated in the first and second leases.

98 Upon the direction to state the accounts, I have, of course, nothing to do with the question, whether the decrees is valid or operative in this District, or whether the decree is valid or operative in this District; or whether it created a lien in favor of the complainant on the rents of the property here in the hands of the defendant, Wilson, and as against him; or whether, if it has not been obeyed by Mrs. Worcester, the complainant's remedy is not against her personally. These are questions for the court. My duty is with the account, and such questions only as grow out of its statement, and being directed generally "to state the accounts between the parties," it must, I suppose, for the purpose of doing so, be considered that the decree is operative here, and does create the lien contended for; and so assuming, the conclusions to which I have come in the case, are:

1. That the marriage settlement gave Mrs. Cheever the power to lease the property settled to her separate use, and to anticipate the rents in advance of their periodical payment, and to pledge them for the repayment of the advances made.

99 2. That she did pledge the rents to the defendant prior to the divorce, and the advances hereafter allowed were made upon the faith of that pledge; that he is entitled to all the advances made prior to notice to him of the divorce, and to have them repaid by all the rents then due and subsequently accruing, as well those of the Sixth street houses as of the avenue property, and as well by the share decreed and assigned to the complainant as by the portion left for the defendant, Annie.

3. That the share of the rents to which complainant is entitled under the decree is one-third of two-thirds, and no more; that he is not entitled to participate in the third which Mrs. Hughes enjoyed during her life for her dower, and which fell in by her death in 1863, after the decree of divorce and assignment by Mrs. Worcester to the complainant; and that he could take said third of two-thirds only subject, as between himself and the defendant Wilson, to be postponed in the payment thereof to the advances made by him prior to

his notice of the divorce, and nothing until such advances were repaid. But, after payment thereof, and from that time, the
100 complainant (having the rights he claims) would be entitled to receive his third of the two-thirds of the rents to the date of this report, quarterly; and he would then also be entitled to receive the third that had been suspended by the interposition of the defendant's claim, from the date of the decree to the time the advances were repaid, such suspended third to be paid out of the defendant Annie's share of the future rents coming to her from the defendant, as tenant of the avenue property, and as agent and assignee of the Sixth street houses, as such rents should become due, (such share being two-thirds of two-thirds,) and interest upon both portions of the complainant's third, quarterly; and that if the defendant was bound to recognize the complainant's rights, he should have retained and so applied the rents, and was not justified, as between himself and the complainant, in paying to the defendant. Annie, without his consent, any portion of such rents until he, the complainant, was fully paid.

101 5. That the first and several leases fix the rate of rent, as to the complainant as well as the other parties, and I decline to increase it. The leases are still subsisting; the second does not expire till October, 1865.

6. That the complainant is not bound by the terms of the third lease of Dec'r, 1858, made after the divorce; but he is bound by the second lease of July, 1857, made prior to the divorce, and under the covenant therein is entitled, after repayment of the advances as aforesaid, to his portion of the rent as stipulated in that lease, down to the present time, notwithstanding the buildings were destroyed by fire in April, 1862.

7. I find that the defendant, Wilson, had notice of the divorce and decree some time between the 26th August and the 11th September, 1857; and that the first year's rent of the first lease, from Oct. 1, 1855, to Oct. 1, 1856, was settled; that the amount or balance due to said defendant, Wilson, for his advances to the defendant, Annie, on the faith of the rents prior to the divorce, or his notice thereof, and at the time of notice, was the sum of $4,627 78, includ-
102 ing interest to the 11th September, 1857; and that the balance was extinguished on the 1st Jan'y, 1863, by the application of the rents, leaving an overplus of $23 $\frac{30}{00}$; that the sum of $622 $\frac{97}{100}$ including interest, is due to the complainant from the time of the payment of the defendant's advances to the 1st January, 1865, the last quarter day; and the further sum of $2,437 $\frac{41}{100}$ and interest, from the date of the decree to the said time the advances were paid; that the amount of the said rents subsequent to the payment of the advances, accruing from that time to the 1st March, 1865, from the avenue property, as well as the 6th street houses, while the defendant collected the rents thereof, and interest, (excluding the third which fell in by the death of Mrs. Hughes,) is the sum of $1,331 $\frac{84}{100}$. I find, therefore, the amount due to the complainant, on the assumption that he has the rights he claims, to be the sum of $3,060 $\frac{38}{100}$,

and the sum in the hands of the defendant, Wilson, applicable thereto, and to an item of $67 04 for taxes, to be the sum of $1,831 $\frac{84}{100}$, not sufficient, allowing also said item of taxes to pay said complainant's arrears, by the sum of $1,295 58.

103 Schedules W. and C. 1, C. 2, and C. 3, show the details of these findings; but before stating them I may be allowed to explain some of these rulings or conclusions, and why I came to them:

1st. As to the right to lease and anticipate the rents. The words of the marriage settlement bearing upon these questions are: "To suffer and permit said Annie to receive, take, and enjoy the rents, issues, and profits of said premises to her sole and exclusive use and benefit, free from the control of the complainant, and from liability for his debts during her life."

The objection is, that she had no right, under the settlement, to make leases in reversion, or to anticipate the rents, and that her anticipations with the defendant Wilson are not in legal form.

The right to receive, exclusively, the rents and profits of this property, settled to her separate use during life, made her owner to the extent of her estate therein, namely, during her life.

104 Then the power or right of disposition is incident to ownership, and is as extensive as it is. As owner she might make leases to the extent of her estate or interest, but not beyond it; they would determine with her life. As tenant for life she could not bind those who take in remainder under the settlement. But, with that limitation, she has the same power and right of disposition over her life estate as a femme sole. The second lease is made to the same person, and is but a continuation or extention of the term of the first, and both are bounded by her life. The cases that have been cited are where the tenant for life, under the exercise of a power of leasing, attempted to bind the reversioner. There was no question in these cases as to the binding effect of the leases upon the tenant for life himself as long as he lived. (Doe *v.* Cavan 5, T. R. 567; 4 cru. sig. 305; Sug. on Pow., 366, 634.)

As owner she has also the power and right to anticipate and dispose of the rents of this property, settled to her separate use, either partially or during the whole of her life, there being no

105 restriction against anticipation imposed upon her by the settlement. The rule of the English cases is, that she must be expressly restrained by the instrument creating the separate estate, or her power of anticipation and disposition is unlimited to the extent of her ownership. (Atherly on Mar. Set't, 330–333; 2 Sto. Eq., s. 1390–1393; 2 Kent, 163; Bell on Hus. and Wife, 67; Law. Lib., 315, 325; 1 Lead, Cases in Eq., 405; Sug. on Pow., 115, 119.) There has been some conflict of opinion on this point in our own courts. Thus, Chancellor Kent endeavored to engraft on the rule the qualification that the power to anticipate must be clearly and specially given, ruling (though admitting the weight of authority to be against him) that a feme covert as to her separate property was to be considered as a feme sole sub modo only; and where the set-

tlement provided that she should receive from the trustee the income as it might from time to time become due, she has no power, by anticipation, to dispose at once of all the income. (Jacques *vs.* Metho. ch., 3; Jo. C. R., 77.) But he was overruled by the Court of Errors, (17 Jo. R., 548,) which court decided that a feme
106 covert, with respect to her separate estate, is to be regarded as a feme sole, and may dispose of her property without and against her trustee's consent, unless she is specially restrained by the instrument under which she acquires her separate estate. Chan'r Johnson, of Maryland, attempted to follow Chan'r Kent, in Cook *v.* Husbands, 4 Md. Ch. Dec., 68, 416. But he also was overruled by the Court of Appeals in the same case, 11 Md. Rep., 492, who held that the jus disponendi was incident to the ownership, and equally extensive, unless expressly limited and restrained. The English rule has been followed in Virginia. (2 Leigh, 183, in Alaba., 17; Ala., 612, 797; 23 Ala., 643, in New York; 10 Barb., 597, and Penna., 1; Serj. & R., 275; 1 Peter R., 116.) The exception to this course of decision is South Carolina, whose courts have followed the rule as attempted to be established by Ch. Kent. (3 Des., 417; 1 Hill's Ch. R., 228; Dud. Eq. R., 128; 1 Strob. Eq. R., 27.) The statement of the object of the provision, as "for the maintenance and support of the wife," has been held to be a restraint upon anticipation. (Hyde *v.* Price, 3; Vez., 437.) But that was the case of a voluntary, conventional separation, where the provision for the wife emanated from the husband, and where, as he remained
107 legally liable for her future debts, he might well be supposed to have stipulated that his allowance should be paid to his wife periodically, and not anticipated as a further security, additional to the covenant of her friends to indemnify him from her future debts. In divorce there is no such liability; and in the present case the property settled on the wife did not proceed from the husband, but was her separate maiden property.

Nor does there appear to be any such, or indeed any restrictive words in this settlement.

Nor is any form prescribed in which any pledge of the rents should be made. The anticipations commenced by a formal deed to Carlisle & Maury, in Dec'r, 1856; but I think the paper of the 11th Feb., 1857, (W. 3,) and the two notes of the 28th July and 1st August, 1857, coupled with the evidence of the previous agreement, in pursuance of which they were given, are, in equity, sufficient assignments and pledges of the rents by anticipation for advances, so far as they are shown to have been made.

2. No assignment to compl't; no notice to him of ad-
108 vances. The authority or power executed by Mrs. Cheever of the 27th Aug't, 1857, to the complainant, as to his receipt of the rents, appears to me to be a substantial compliance with the decree of divorce. The condition or proviso appended thereto but expresses the law of the case, and was mere surplusage. The complainant, taking an equity merely, must be postponed to prior bona

fide equal equities, whether expressed in the assignment or not, or whether he had notice thereof or not.

All who take under a marriage settlement are purchasers for a valuable consideration; but that rule can scarcely be applicable to these divorce proceedings, or to a party claiming new rights through or under them. Caveat emptar would seem to be a more fit rule between such parties, especially when an innocent third party is to be affected by their acts. In the present case, however, the complainant must be presumed to have known the legal effect of the marriage settlement, viz: that it gave his wife the power to anticipate and dispose of the rents. He might have enquired of
109 the tenant, and I think he was bound to do so; and that he cannot now defeat or exclude the payments which were made to his wife by the defendant, Wilson, before notice to him of the divorce, on the plea that he, the complainant, had no actual notice of such payments or advances.

3. Amount of the advances. The claim of the defendant Wilson is composed of open accounts, checks and drafts, and sums paid to Mrs. Cheever, for which her notes, due bills or orders were taken at the time, covered and protected by the deed to Carlisle and Maury, by the assignment of the 11th Feb'y, 1857, and by the two notes of the 28th July and 1st August, 1857, one for $2,412 60, and the other for $1,000. In stating in my conclusion, No. 7, the amount of the advances, made at the time the defendant Wilson had notice of the decree, at the sum of $4,627 78, I included therein the said two notes, except the sum of $942, which, it appears from Wilson's testimony, and the entry in his journal of the 22d Sept., 1857, had not been advanced, and should be credited.

There is confusion as to the precise dates of the ad-
110 vances covered by these notes, growing out of the statements of the answer, and the testimony given upon this reference. But, with the exception of this sum of $942, the defendant Wilson states that the amounts of those notes were actually advanced by him to Mrs. Cheever, either prior to their date or within from five to twenty days afterwards. Mrs. Worcestor states the same, and fixes the limit at ten or fifteen days; and she states further, in answer to the 7th cross-interrogatory of the complainant, that she thought she had received $3,500, and a little more, in cash, of the defendant, Wilson, within twenty days of the 28th July, 1857. The earliest period he is proved to have had notice of the divorce is between the 26th Aug't and 11th Sept., '57. Mr. Kennedy's testimony, (depo'ns, p. 4, 33,) when stating the conversation he held with Mr. Wilson in Oct. '57, is in conflict with their statements. But that part of the conversation (p. 56) which gives the amount of the advances said to be then claimed, is denied by Mr. Wilson; and to give effect to Mr. Kennedy's statement, I do not see how it is possible to avoid imputing perjury to both Mr. Wilson and Mrs. Worcester. It does not approach Mr. Kennedy in the same way;
111 as to him it is a matter of recollection merely; speaking, too, after a lapse of more than seven years, and having never, as

he stated, thought of it since till the day he gave his testimony. I cannot, therefore, bring myself to think it would be right to impute such an offence to these parties, on a conversation so casual and brief as that seems to have been, and on a statement, if made, made by the defendant Wilson from recollection, and without reference at the time to either books or vouchers. Mr. Kennedy might have misunderstood him, or he may be mistaken in his recollection. I have therefore included the two notes in the amount, less the $942.

I have also allowed the sight draft of the 28th July, 1857, on New York, for $500; for though Mrs. Worcester, in her answer to cross-interrogatory No. 9, states she thought it was covered by the note for $2,412 60 of the same date, she afterwards, on re-examination, (No. 18,) states it doubtfully, and the defendant, Wilson, (No. 21,) denies positively that it was embodied in that note.

The $1,138 $\frac{10}{100}$ mentioned in the exhibit to Wilson's answer
112 to cross-interrogatory No. 16, relates to the account of the store goods, sight drafts, &c., and does not embrace the whole of the store account prior to the divorce.

I have not come to these conclusions as to those notes and draft without considerable hesitation and embarrassment; no doubt, there was irregularity in not making the proper entries in his books, or preserving the evidence of the payments; but Mr. Wilson could not have supposed, when he surrendered his vouchers to Mrs. Worcester, on his settlement with her, that she would destroy them. I do not see how I could do otherwise than admit them, without casting a reflection upon the parties, which I do not think the circumstances would justify, regarding all as standing equally fair.

The amount of the advances was large, to be made within so short a period; but it must be borne in mind that Mrs. Cheever was then living apart from her husband, away from her home, and residing in a distant State, seeking a divorce, which, from the state of feeling existing between them, she seems to have been bent upon accomplishing, journeying to and fro, sick and nearly insensible part of the time, among comparative strangers, having everything to
113 pay for, and eminent connsel employed; in such circumstances, and in such a condition, it is not difficult to imagine that her wants and expenditures must have been large and irregular; and that, with such outlets, three or four thousand dollars would be needed, and would soon vanish.

I have allowed the premiums paid by the defendant Wilson since the divorce for the insurance of Mrs. Worcester's life. It is shown to have been part of the original agreement for making the advances, that her life should be insured and the policies assigned as collateral security. One was assigned on the 11th Feb'y, 1857, and the other the 29th Sept., 1857. I think they were proper expenses under the circumstances, and a charge against the rents. I do not allow the premiums paid by the defendant on the insurance of her second husband's life; he had no interest in the property. See the policies W. 4, W. 5.

I have not charged the defendant with the $200 paid to him by

Munch, and $100 by Jacob Wilson, tenants of the 6th street property, in the spring of 1864. They were paid to him after
114 his agency, and his claim, on the rents of that property had ceased out of subsequently accruing rents. It was a new transaction. He had loaned Mrs. Worcester $300, and she gave him two orders on her tenants, Munch and J. Wilson, to repay him. She was then collecting the rents of the Sixth street property herself, or through other agents. It is a matter to be adjusted between the complainant and his late wife; I mean the third of the sum. See note and order W. 6, W. 7.

Nor have I given the complainant the benefit of the dower interest of Mrs. Hughes, which fell in and came to the defendant Annie, after the divorce. The decree acted upon things as they then were at its date, and gave complainant one-third of his wife's interest in her own right at that time, and not in any interest which might fall in, or come into her enjoyment afterwards. The words of the decree are: "One-third part of the rents that would be coming to her in her own right, as the same shall hereafter become due, during her life," her mother at that time being in the enjoyment of one-third of the whole of the rents for her dower, and
115 continued so until the spring of 1863.

4. Repairs, rent, covenant. I make no allowance for repairs of the dwelling house, on the avenue property. By the [the] first lease, the defendant Wilson was bound to keep the dwelling house in repair. The second lease says nothing on the subject. It was, however, but an extension or continuation of the term granted by the first, made before it expired, with the superadded obligation to pay the rent, though the building should be destroyed by fire. I think the two leases must be taken in pari materia, and that the obligations contained in each run through the extended term granted by the second lease, and therefore that the defendant, as between himself and the complainant, is bound by his covenant in the first lease to meet the current annual expense of repairs to the dwelling house during both terms, and by his covenant in the second (which has not yet expired) to pay the rent, notwithstanding the destruction of the buildings by fire.

116 I understand the authorities to be, that, upon an express covenant by the tenant to pay the rent during the term, he is bound to pay though the building should be destroyed. The rule appears to turn upon covenant or no covenant to pay.

The third lease casts the onus on the lessors to repair and rebuild, but as that lease was made after the decree, and without the complainant's privity, it is thought he is not bound by it.

5. Rebuilding after the fire. The expense of erecting the present store rooms incurred by the defendant, Wilson, since the fire, has been introduced by him into the case. By the third lease, Mrs. Hughes and Mrs. Worcester bound themselves to rebuild in the event of fire, or to forgo the rent. That contract was made in 1858, after the divorce of 1857. If the complainant acquired any rights in the property through the decree of divorce, he would not,

it is conceived, be bound by this third lease and the new terms and obligations it introduces. For their default, after notice, de-
117 fendant rebuilt the present store on the lot at his own cost. Questions may grow out of it between the defendant and Mrs. Worcester and Mrs. Hughes' estate, as whether for their default in rebuilding, he might not have abandoned and sued for damages for breach of their covenant; or whether he could rebuild, and claim under their covenant the forfeiture of the rent; or, if he rebuilt, doing that which they had bound themselves to do, but failed, whether, in equity he could not claim the cost, assuming and continuing to pay the rent? But these appear to me to be questions between the defendant and Mrs. Worcester and Mrs. Hughes' estate, and for hereafter, with which the complainant, if not bound by the third lease, has nothing to do. Whatever his rights were through the decree, they were fixed by the leases existing at its date, and can hardly be impaired or defeated by this third lease made afterwards, so far as appears, without his knowledge or consent.

I have not therefore entertained this claim for the expense of rebuilding the store rooms.

118 6. Complainant's rights. If the Indiana decree conferred upon the complainant the rights contended for in the rents of the property here, as against the defendant Wilson, the order of payment would seem to be: 1st the defendant's advances; next, after they were satisfied, the complainant's third from that time to the present; and then so much of his third as had been displaced by the interference of the defendant's claim, from the date of the decree to the payment of the advances; and, as to that part, the principle of subrogation is claimed to apply, and, it appears to me, justly.

The defendant's advances was the first lien on the rents; the complainant's third the next; he was excluded from the fund by the intervention of the defendant's claim, and his third was taken to aid in its payment. The defendant could have permitted the complainant to receive his third, and would still have been secure in his advances by means of the future rents, to which he could have resorted; the full payment of his advances would have been postponed merely, but not ultimately imperiled. The third decree to the complainant by the terms of the decree was to be paid as the rents should
119 become due, and for the maintenance and education of the children; and it must therefore have been meant by the complainant and his then wife to be a present and immediate payment, and not even a postponed one, for five or six years, until the defendant's advances were repaid, and much less not to commence till then. In her answer to this bill (page 68) the defendant Annie seems to admit that the payments to the complainant were to commence with the decree, in subordination only to the advances made by the defendant Wilson to her. She obtained the advances for her separate use, chiefly in 1857, the year of the divorce, and was benefitted by their repayment.

If the authority given to the complainant to receive his portion of the rents was not in strict accordance with the decree, is that mate-

rial in equity? The defendant was connected with these rents, as tenant of part of the premises, and as agent and assignee of the other part, and the decree gave him notice sufficient at least to put him upon enquiry as to the complainant's right; and, with that notice, and pending this suit, he accounted with the defendant Annie for the rents accruing after his own claim was satisfied, or has retained
120 them since the fire of '62. The complainant could not have made the claim of substitution in his bill; the right, if it exists, has grown out of the defendant's answer, setting up and claiming priority for his advances. It seems to me, therefore, but equitable as the defendant interposed (as he lawfully might) and postponed the complainant, that he should be remitted to the defendant's right, and be paid his third, thus intercepted and suspended, out of the defendant Annie's portion of the future rents, to which the defendant Wilson could have resorted.

The result, if substitution be the correct rule between these parties, will be, to the complainant, that he will obtain the whole ultimately of the third of the rents decreed to him, even if all the allowances made to the defendant on this reference be sustained, postponed in the payment only, but compensated by interest; and to the defendant, that the balance due from Mrs. Worcester to him will be be increased, but in which he will be secured, as between himself and her,
121 by the rents under the third lease, which has more than five years to run, with the unexpired fraction of the second lease, provided she live; and he can guard against the contingency of her death, as he did in the commencement, by an insurance on her life. The party who will be really and ultimately affected is Mrs. Worcester, who will be reduced to the mere third of the income which fell in on the death of her mother; the rest of the rents will be required to meet the claims of the complainant and the defendant Wilson.

To meet any different view that may be entertained by the court, I have stated the complainant's claim in two parts, one commencing from the ultimate payment of the defendant's advances, and the other from the date of the divorce. If the court should think that the third decreed to the complainant should commence only from the time the defendant's advances were fully paid, the latter branch of his stated claim will have to be rejected. And the decree against the defendant Wilson will be, if my conclusions be sustained,
122 for $\$1,831\frac{81}{100}$, to be paid now on account of the $3,060 38, otherwise simply for the $\$622\frac{37}{100}$.

7. Rents of the 6th street property. I have included them in the account, so far as received by the defendant. The bill would seem to have been framed with reference to the rents of the Avenue property only; but the decree of divorce embraces both, and it is made part of the bill as an exhibit, and their is a prayer for general relief; the claim for the 6th street rents is not alien to, or inconsistent with, the object of the bill. The defendant Wilson connected himself with the rents of the 6th st. property by taking an assignment of them in Feb'y, '57, and undertaking their collection to secure his advances. It would seem, therefore, that, in settling the account of his advances,

the rents of that property must, in some way, as long as he continued to collect them, be brought into the account.

For these reasons, I came to the conclusions stated above.

The account follows.

W. REDIN, *Auditor.*

14th March, 1865.

123 *Statement of the rents of the 6th steeet property.*

Dubant, 1 Mar., '57		25
Reece, from 1 Aug., '57, to Aug., 58, $300	300	
1 Aug., '58, to 1 Feb., '59, 350	175	
	475	
Widow's dower, ⅓	158 33	
		316 67
Munch, 1 Feb., '59, to 1 Feb., '61 $350	700	
1 Feb., '61, to 1 Feb., '62, 300	300	
1 Feb., '62, to 1 Feb., '63, 350	554 17	
To 1 Oct., '63, at $45 a month	45	
	1,599 17	
Widow's dower	533 06	
		1,066 11
Jacob Wilson, 1 Aug., '57, to 1 Apr., '61, $300	1,100	
1 Sep., '61, to 1 Oct., '63, 200		
(5 mo's not charged)	416 66	
	1,516 66	
W'd's dower 505 55		
Due bills or notes 290		
Do 65 68		
	861 23	
		655 43
Being ⅔ds		2,063 21
Commission		206 32
		1,855 89

W. REDIN.

124

125 *Account W.*

Store or grocery bill from 13 Nov., '56, to 26 Aug., '57	27 36	
Cash, per orders, drafts, acceptances, &c.	605 72	
Sight drafts on New York, 19 June, '57 50		
Do 29 do 150		
Do 28 July, 1857 500		
	700	
		1,333 08

Interest thereon, averaging			20 56
Notes.—1 Aug., 1856, at 1 year	200		
Interest to 11 Sept., '57	13 33		
20 Nov'r, '56, 1 year	100		
Interest	4 83		
26 Nov.,' 56, deed to Carlisle & Mary	1,000		
Interest	47 50		
26 Dec., '56, 1 year	100		
Interest	4 25		
17 Jan., '57, 1 year	100		
Interest	3 86		
28 July, 1857	2,412 60		
1 Aug't, 1857	1,000		
	3,414 60		
Credit per journal p. and depo'n p.	942		
		2,470 60	
No date for a calculation of interest on these last two notes, other than after 20 days from their date. The dates of the advances are not shown. They were made, some before and some after, but all within 20 days from the dates		9 50	
			4,053 91
			5,407 55

Note for $180 omitted, see page

126 Amount of advances, &c $5,407 55

Cr.

⅔ds of net rents from 1 Oct., '56, to 1 Oct., '57, viz:

1858. Jan 1.	3 mo. rent of avenue property		216 67	
	Interest to 11 Sep		9	
April 1.	Avenue	215 67		
	Dubant com'n 2 56 off..	22 50		
			239 17	
	Interest		7 17	
July 1.	Avenue		216 67	
	Interest		2 52	
Oct. 1.	Avenue	216 47		
	6th street, Reece, 52 78 comm., off 5 27	47 50		
			263 97	
				955 17
	Balance 11 Sep., '57, prior to notice of divorce			$4,442 38
	Interest to 1 Jan. 1858,			96 29
				$4,538 67

4,442 38			
180	Note omitted.		
5 40	int.		
4,627 78			
1858. Jan. 1.	Avenue	216 67	
	6th st., Reece	47 50	
	Do Jacob Wilson, comms. off	21 36	
	Do do	21 36	
			306 89
			4,231 78
	Interest due Apr'l 1		63 46
			4,295 24
" April 1.	Avenue	216 67	
	6th str't, J. Wilson	25 65	
	Do Reece	47 50	
			289 82
	Forward		6,005 42
127	Bro't forward		$6,005 42
	Interest due July, '58		60 03
			4,065 45
1858. July 1.	Avenue	216 67	
	6th st., Reece	47 50	
	Do J. Wilson	25 65	
			289 82
			3,775 63
	Int. due 1 Oct		56 62
			3,832 25
Oct. 1.	Avenue	216 67	
	6th st., Reece	47 50	
	Do J. Wilson	25 65	
		289 82	
	⅔ds taxes for '58	74 43	
			215 39
			3,616 86
	Int. due Jan., '59		54 24
			3,671 10

1859. Jan. 1. Avenue		216 67	
		47 50	
		76 05	
			441 12
			3,329 98
Int. to Ap. 1			40 93
			3,379 01
Commissions.—Note 11 Feb., '57		180	
Int.		20 40	
Repairs 4 67, int. 50		6 17	
			205 57
Carried forward			$3,585 48
128 Bro't forward			3,585 48
Expenditures omitted Lewis' life policy,		16 85	
Repairs, Nov. '57		14 33	
Lewis' Dec.		29 26	
Ins'ce Jan. '58		6 67	
Lynch R. "		67	
Lewis D. "		29 26	
Int		4 30	
			101 34
			3,686 82
1859. April 1. Avenue		216 67	
6th st., J. Wilson		25 65	
" Munch		50 50	
		292 82	
Ins'nc, Etna 6th st	9 33		
Do	5 33		
		14 66	
			278 16
Int. due 1 July			3,408 66
			51 12
			3,459 78
July 1. Avenue		216 67	
6th st., Munch		50 50	
Do J. Wilson		25 65	
		292 82	
Taxes, 6th st	13 33		
Life policy	22		
		35 33	
			257 49
			3202 29

		Int. to. 1 Oct		48 03
		Car. forw'd		$3,250 32
129		Bro't forward		$3,250 32
	1859. Oct. 1.	Avenue	216 67	
		6th st., Munch	50 50	
		Do J. Wilson	25 65	
			202 82	
		Taxes	72 18	
				220 64
				3,029 68
		Int. due 1 Jan		45 43
				3,075 11
	1860. Jan. 1.	Avenue	216 67	
		6th st., Munch	50 50	
		Do J. Wilson	25 65	
			292 82	
		Life policy, Lewis	51 26	
		Insurance, Etna	9 33	
			60 59	
				232 32
				2,842 88
		Int. due 1 April		42 63
				2,885 51
		April 1. Avenue	216 67	
		6th st., Munch	50 50	
		Do J. Wilson	25 65	
			292 82	
		Insurance, Etna	5 33	
				287 49
				2,598 02
		Int. due July		38 97
		Carry forward		$2,636 99
130		Brot. forward		$2,636 99
	1860. July 1.	Avenue	216 67	
		6th st., Munch	50 50	
		Do J. Wilson	25 65	
			292 82	

	Munch, repairs		20 33	
				272 49
				2,364 50
	Int. due Oct. 1			35 46
				2,399 96
	Oct. 1, Avenue		216 67	
	6th st., Munch		50 50	
	Do J. Wilson		25 65	
	Do Munch		50 50	
				343 32
				2,056 64
	Int. due Jan. 1			30 84
				2,087 48
1861. Jan. 1.	Avenue		216 67	
	6th st., Munch		50 50	
	Do I Wilson		26 65	
			292 82	
	Life policy	51 26		
	Taxes for '60, $\frac{2}{3}$ds	82 30		
	Repairs, 3 m	1 67		
			135 23	
				157 59
				1,929 89
	Interest to April			28 93
	Carry forward			1,958 82
131	Bro't forward			$1,958 82
1861.	April 1. Avenue		216 67	
	6th st., Munch		50 50	
	Do J. Wilson		25 65	
			292 82	
	Insurance, 6th st	9 34		
	Do do	5 33		
			14 67	
				278 15
				1,680 67
	Int. due 1 July			25 20
				1,705 87

	July 1. Avenue		216 67	
	6th st., Munch		50 50	
	Do J. Wilson		25 65	
			292 82	292 82
				1,413 05
	Int. to Oct. 1			21 19
				1,434 24
	Oct. 1. Avenue		216 67	
	6th st., Munch		50 50	
	Do do		50 50	
	Do J. Wilson		25 65	
			343 32	
	⅔ds taxes '61		50 65	
				292 67
				1,141 57
	Int. due Jan. 1, '62			17 11
	Carry forward			$1,158 68
132	Bro't forward			1,158 68
	1862. Jan. 1. Avenue		216 67	
	6th st., Munch		50 50	
	Do Wilson		25 65	
			292 82	
	Life policy		51 26	
				241 56
				917 14
	Int. due April			13 75
				930 89
	April 1. Avenue		216 67	
	6th st., Munch		50 50	
	Do J. Wilson		25 65	
			292 82	
	Insurance, 6th st	9 33		
	Do do	5 33		
			14 66	
				278 16
				652 73
	Int. due July			9 78
				662 51

July 1.	Avenue		216 67	
	6th st., Munch		25 65	
	Do J. Wilson, 10 Oct., 63		50 50	
			292 82	
	Edmonston, rep'r to store	56 67		
	Taxes for '62	62 22		
			118 89	
				173 93
				488 58
	Int. due 1 Oct			7 32
	Carry forward			495 90
133	Bro't forward			$495 90
1862. Oct. 1.	Avenue		216 67	
	6th st.		50 50	
				267 17
				228 73
	Int. due 1 Jan., '63			3 42
				232 15
1863. Jan'y 1.	Avenue		216 67	
	6th st., Munch		101	
			317 67	
	⅔ds taxes, '63		60 22	
				255 45
Do	do do Advances paid and this overpayment			$23 30

W. REDIN.

134 C.—1.

Statement of ⅓ of ⅔ of the rent of the Avenue property from January, 1863, to January, 1865.

⅓ of surplus from other side			$7 77
	Int. from 1 Jan., '63, to 1 Ma'ch, '65		1
1863. April 1.	Avenue, ⅓ of ⅔		72 22
	Int. to 1 March, '65		8 28
July 1.	Avenue		72 22
	Interest		7 20
Oct. 1.	Do		72 22
	Do		6 12
1864. Jan'y 1.	Do		72 22
	Do		5 14
April 1.	Do		72 22
	Do		4 06
July 1.	Do		72 22
	Do		3
Oct. 1.	Do		72 22
	Do		1 92

1865. Jan'y 1.	Do		72 22
	Do to 1 March, '65		72
			622 97

W. REDIN.

135 C.—2.

Statement of $\frac{1}{3}$ *of* $\frac{2}{3}$ *of net rents and interest from 26th August, 1857, to 1 Jan'y, 1863, quarterly rents, interest to 1 March, 1865, to wit:*

From 26 Aug't, '57, to 1 Oct., '57,	Avenue	27 51	
	Dubrant	7 50	
Interest from 1 Oct., '57, to 1 Mar., '65		15 57	
			50 58
1858. Jan'y 1		102 29	
	Interest	43 90	
			146 19
April 1		96 61	
	Do	39 84	
			136 45
July 1		96 61	
	Do	38 40	
			135 01
Oct. 1		71 79	
	Do	30 83	
			102 62
1859. Jan'y 1		113 71	
	Do	41 81	
			155 52
April 1		92 72	
	Do	33 01	
			125 73
July 1		85 83	
	Do	29 24	
			115 05
Oct. 1		73 54	
	Do	23 72	
			97 26
1860. Jan'y 1		77 41	
	Do	23 87	
			101 28
136 1860. April 1		$95 83	
	Interest	28 32	
			124 15
July 1		90 83	
	Do.	25 48	
			116 31
Oct. 1		114 44	
	Do.	29 78	
			144 22

1861.	Jan'y 1		52 53	
		Do.	13	
				65 53
	April 1		92 71	
		Do.	21 85	
				114 56
	July 1		97 61	
		Do.	21 34	
				118 95
	Oct. 1		97 55	
		Do.	19 88	
				117 43
1862.	Jan'y 1		80 52	
		Do.	15 20	
				95 72
	April 1		92 72	
		Do.	16 27	
				108 99
	July 1		57 97	
		Do.	9 28	
				67 25
	Oct. 1		89 05	
		Do.	12 34	
				101 39
1863.	Jan'y 1		85 15	
		Do.	12 05	
				97 20
				$2,437 41

W. REDIN.

137 C. 3.

Statement of $\frac{2}{3}$ds of the net rents of the avenue property from Jan. 1, 1863, to 1 Mar., 1865, 2 years 2 months at $1,300 a year, $\frac{2}{3}$ 866 $\frac{67}{100}$		$1,733 34
Interest quarterly to 1 March, '65		98 50
		1,831 84
To meet $\frac{2}{3}$ of $\frac{2}{3}$ of taxes for 1864	67 04	
	622 97	
		690 01
Leaving this amount		1,141 83
To meet compl'ts. 3d from Aug't '57 to Jan'y '63, and int'st		2,437 41
Deficiency after acc't'g for $\frac{2}{3}$ds of the rents under the 2d loan to Jan'y 1, 1865		$1,295 88

14 March, 1865. W. REDIN, *Aud'r.*

138 Dr. Mrs. Anna J. Cheever:

1856.				
Nov.	13.	To merch'd'se	$2	
	27.	"	1	25
Dec.	1.	cash		50
	29.	"	4	87
	30.	"	1	12
	31.	"		25
1857.				
Jan'y	3.	"	1	87
	6.	draft	100	
	6.	cash		48
	12.	"	2	
	15.	"		38
	16.	"	44	87
	17.	"	62	63
	20.	"		81
	21.	"	20	
	22.	"	25	75
	23.	"	4	03
	24.	"	4	67
	27.	"	37	
Feb'y	2.	"	5	55
	"	"	20	77
	4.	"	23	
	5.	"	1	
	7.	"	13	
			374	80

Settled as per statement rendered and receipts given in full, up to October 22d, 1863.

1857.				
Jan'y	27.	By $\frac{2}{3}$ house rent, up to Jan'y, 1857	$33	33
	"	$\frac{1}{4}$ store rent to 1857	166	66
"	15.	$1\frac{1}{2}$ gal. demijohn		62
Feb'y	7.	Ball'ce below	174	19
			374	80

Settled as per statement rendered and receipts taken from Mrs. Ann J. Worcester, in full, up to October 22, 1863.

139 Dr. Cr.

'57.				
Feb.	7.	To balance	$174	19
	9.	merch'd'se	4	75
	11.	"	2	96
	27.	"	10	
Ap.	17.	"	1	
June	19.	merch'd'se	292	08
	29.		150	
July	1.		433	
	28.		500	
Aug.	26.		2	66
			$1,570	64

Settled on receipt given in full, 22 Oct., 1863.

Mar.	9.	By sundries to Apr. '57	$25	
May	19.		216	67
Sept.	11.	Balance	1,328	97
			$1,570	64

Settled and receipts given in full, 22d October, 1863.

Divorced.

Mrs. Ann J. Hughes:

Sept. 11.	To balance	$1,328	97	Sept. 11.	By sundries &c., &c.	$16	67
	Sundries &c., &c.	10	88				

140 In the Supreme Court of the District of Columbia.

No. 21.—*Defendant's exceptions to auditor's report.—Filed May* 3, 1865.

B. H. CHEEVER
vs.
ANNIE J. WORCESTER and JESSE B. WILSON. } 1,298. Equity.

The defendant, Jesse B. Wilson, craves leave to file the following exceptions to the auditor's report, filed in this cause on the 4th day of April last, viz:

1. He excepts to that part of his report contained in his conclusion No. 3, on pages 15 and 16, which decides that the complainant is entitled to receive his third of the two-thirds of the rents from the date of the payment to the defendant, if only his advances made prior to his notice of the divorce, instead of from the payment of all his advances, or at least of those made before suit brought.

2. He excepts to so much of said report contained in the same conclusion No. 3, on page 16, as decides that complainant is entitled to recover his third of two-thirds of the rent, from the date of the decree of divorce instead of from the date when this defend-
141 ant's prior claim upon said rents were first satisfied.

3. Even if the auditor's decision excepted to in 2nd exception were correct, this defendant excepts to so much of said report contained in the same conclusion as decides that this defendant should have retained and applied all the rents accruing from or collected by him, after the prior claims, as aforesaid, were satisfied, to the payment of complainant's third of two-thirds, computed from the date of the divorce, and was not justified in paying any portion to the defendant Anne J. Worcester until complainant was fully paid.

4. He excepts to so much of said report as decides that this defendant is accountable to complainant for any part of the rents collected by him from the 6th street property, as the agent of the defendant, Annie J. Worcester.

5. He excepts to so much of said report contained in conclusion No. 6 as decides that the complainant is not bound by the terms of the third lease of December, 1858, made after the divorce,
142 and is entitled to his portion of the rent, as stipulated in that lease, down to the present time, notwithstanding the destruction of the building by fire in April, 1862.

6. The defendant, Annie J. Worcester, adopts the first and second exceptions aforesaid as her own.

WALTER S. COX,
Sol'r for Def'ts.

No. 22.—*Plaintiff's exceptions.*—*Filed May 3d*, 1865.

BEN. H. CHEEVER
against
ANNIE J. WORCESTER and JESSE B. WILSON. } 1,389. Equity docket 5.

Plaintiff's exceptions on report of auditor, filed April 4, 1865:

1. The plaintiff excepts to divers and sundry errors and discrepencies in auditor's statement of the testimony, which will be noted and explained on argument.

2. The plaintiff excepts to the conclusion of the auditor
143 that the [paper] of 11th February, 1857, (a 3,) or the promissory notes referred to, constitute a valid assignment of rents and profits thereafterwards to grow out of real estate, inasmuch as such papers, not being under seal, could have no more effect upon an interest in real estate, which future rents of real estate are, than if the same words had been a parole only.

3. Plaintiff excepts to the conclusion of the auditor that these papers (W. 3 and the promissory notes) make a good assignment in equity as against this plaintiff, inasmuch as, although they may good in equity, as between the parties thereto, they cannot, being defective in law, be supported as valid against third parties not having notice, under any vague notions of equity.

4. Plaintiff excepts to the conclusion of the auditor that the words in the marriage settlement, said Annie "to receive, take, and enjoy said rents," &c., &c., give her power to anticipate and convey, in futuro, said rents, &c.; inasmuch as such construction would defeat the purpose of said settlement as declared therein, which was to make "a secure and permanent provision for said Annie."

144 5. Plaintiff excepts to the statement in the report of the auditor of the plaintiff's interest, as granted by the Indiana decree, in the rents and profits of the property in question, inasmuch as one-third part of the rents, &c., profits of the same, are in terms granted by that decree. (See decree.)

6. Plaintiff excepts to the conclusion of the auditor that after the estate became relieved of the incumbrance of dower by the death of the dowager, the plaintiff "should not continue to receive one-third part of the rents and profits that would be coming to said Annie."

7. Plaintiff excepts to the conclusion of the auditor that the advances of the defendant Wilson, up to date of his notice of the divorce, to defendant Annie, amounted to $\$4,627\frac{78}{100}$, inasmuch as it appears by said Annie's testimony that the notes of July 28, 1857, for $2,412 60, and Aug't, '57, for $1,000, (which are included in said sum of $4,627 78,) could not have been delivered to defendant Wilson before Sept. 22d, 1857, long after his notice of divorce,
145 that being the date when, as it appears by def't Wilson's books, the unpaid balance of $942 on said notes was credited to her, (see also Wilson's testimony, cross-int. No. 22;) and inasmuch as defendant Wilson stated to Mr. Kennedy at the time of notice of divorce (see Kennedy's testimony) the amount of his advances to

be $2,000 or less, and inasmuch as it is the business of defendant Wilson, who claims the benefit of these asserted advances, to prove them satisfactorily.

8. The plaintiff excepts to the auditor's argument that the witness Kennedy, who is entirely disinterested, must be mistaken in his testimony; while the defendant Wilson, who is directly interested, and the defendant Annie, who, as it appears from the testimony, testifies under the influence of violent temper and passion, cannot be mistaken or commit perjury, especially when the defendant Wilson's books corroborate Mr. Kennedy's testimony; while the testimony of said defendants is supported only by vouchers which are invisible, and may be suppositions.

146 9. The plaintiff also excepts to the argument of the auditor, that for the six months from February, 1857, to Sept., 1857, the defendant Annie could have need for $4,500, inasmuch as it appears that during most of the time she was at a country seat town in Indiana, where board at the best hotel (which in the year 1857 would have been high at $5 per week) would have amounted to only $130.

Extra expenses of illness, two or three weeks, amounted to, say	$100
Counsel and attorney's fees (the year and locality considered) would have been high at	$300
And travelling expenses of 2 journeys, *a* $100 each	200
Making an aggregate of	$730

While it appears by Mr. Wilson's books that she had of in him that interval, February to August, independent of these notes, sums in cash amounting to $1,121 03.

Which would leave a margin for contingent expenses of nearly $400.

10. And the plaintiff excepts to the conclusion of the auditor that only $1,831 84 is due to plaintiff from defendant Wilson,
147 in præsenti, but claims that Wilson advances before notice were extinguished by the rents, as early certainly as October 1st, 1859, whereby all the rents since that date became applicable to the plaintiff's claim, except the third due to the dowager up to the date of her death, April, 1863.

11. The plaintiff excepts to the conclusion of the auditor that defendant Wilson is not liable to plaintiff for $200 received of C. Munck, and $100 of Jacob Wilson, both for rent of the Sixth street property in the spring of 1864. inasmuch as he received such sums as rents of this property, of which he knew plaintiff was entitled to one-third.

12. Plaintiff excepts to allowance by the auditor, as advances of defendant Wilson, charging the plaintiff's interest in the rents of these properties of the sums alleged to be paid by him as premiums for insurance on defendant Annie's life.

13. Plaintiff excepts to the auditor's statement of the aggre-

148 gate sum received by said defendant Wilson as rents of the Sixth street property, and also of the statement of the rents of and charges upon the Pennsylvania avenue property.

S. P. DINSMORE,
Pl'ff's Solicitor.

No. 23. Cause for hearing on exceptions to Auditor's report. Bill dismissed.

In the Supreme Court for the Dist. of Columbi .

No. 24.—*Decree.—Filed Feb'y* 8, 1866.

B. H. CHEEVER
vs.
JESSE WILSON and ANNIE B. WORCESTER. } In equity.

This cause coming on to be heard on the exceptions to the auditor's report, and having been heard, it is by the court, this eighth day of February, A. D. 1866, ordered that the exceptions of the complainant be and they are hereby overruled, and that the ex-
149 ceptions of the defendant be and they are hereby sustained, and the cause being further submitted upon the pleadings and evidence taken before the auditor, it is hereby ordered and decreed that the complainant's bill be dismissed.

By order of the court.

And thereupon the complainant prays an appeal to the court in bank, which is allowed in open court on his filing his bond to cover the costs of said appeal.

By order of the court.

In the Supreme Court of the Dist. of Columbia.

No. 25.—*Decree dismissing bill without costs.—Filed May* 7, 1866.

B. R. CHEEVER
vs.
A. J. WORCESTER and JESSE B. WILSON. } In equity. No. 1398.

This cause coming on to be heard in general term, on appeal from the decree rendered in special term, and having been heard and duly considered, it is by the court, this 24th day of March, A. D. 1866, ordered, adjudged, and decreed, that the said decree be and it is hereby affirmed, and that the complainant's bill be dismissed with costs.

By order of the court.

150 At the execution of the annexed commission, issued out of the Supreme Court for the District of Columbia, and to me directed, and empowering me to examine evidences in the cause de-

pending in said court between Benjamin H. Cheever as plaintiff, and Lewis and Annie J. Worcester, and Jesse B. Wilson as defendant's, I, Enoch P. Breed, commissioner therein named, having taken before Walter S. Pinckney, a notary public for the city and county and State of New York, duly commissioned and qualified, the oath annexed to the said commission on the 26th day of January, in the year 1864, and having given due notice to the attorneys for the respective parties, did on said 26th day of January at my office, No. 5, Beekman street in the city of New York, proceed to take the following deposition, to wit:

No. 26.—*Deposition of Annie J. Worcester.—Filed July* 14, '64.

Annie J. Worcester, a witness of lawful age, produced on the part of the defendant, Jesse B. Wilson, being duly sworn and examined on the interrogations herewith returned, deposes and says:

To the first interrogatory. That the accounts of Jesse B. Wilson with here hereto annexed W. 1 and W. 2, are a true and cor-
151 rect account of moneys advanced her and paid out on her account, and of goods, wares, and merchandise sold her by said Jesse B. Wilson.

To the second interrogatory. That said moneys were advanced and paid, and said goods and merchandize furnished on the credit of her separate estate, and with the understanding that the amounts due therefore should be paid out of said estate.

To the third interrogatory. That an agreement as to making her such advances of money or merchandize was made by said Jesse B. Wilson, in connection with the renewal of his lease in July, 1857; that said Jesse B. Wilson, in July, 1857, agreed to make such advances of money or merchandise, upon condition that she should renew his lease; that in pursuance of said agreement she did renew it, and it was thereupon agreed that said Jesse B. Wilson should advance to her and that she should have money and merchandize as she wanted them; and was further fully and plainly agreed, that she should give up all her rents in Washington city to said Jesse B. Wilson for the purpose of paying the indebtedness that would ac-
152 crue for said advances to her.

To the fourth interrogatory. That she executed and delivered to said Jesse B. Wilson a paper of which the paper annexed to the commission and hereto annexed marked W. 3 is a copy.

To the fifth interrogatory. That she and her late husband executed and delivered to said Jesse B. Wilson, a paper of which the paper annexed to the commission and hereto annexed, marked W 4, (E. P. B.,) is the original.

To the sixth interrogatory. That she does not know and cannot state anything further.

ANNIE J. WORCESTER.

E. P. BREED,

Commissioner.

There being no other witnesses to be examined, the commissioner closed the said commission, and herewith returns the same under his hand and seal this twenth-sixth day of January, 1864.

[SEAL] E. P. BREED,
Commissioner.

No. 26.—*Commission to E. P. Breed, issued Jan'y* 18, 1864.

153 DISTRICT OF COLUMBIA, *to wit:*

The United States of America, to Enock P. Breed, No. 5, Beekman st., New York:

Know ye, that you are appointed commissioner to examine evidences in a cause depending in the Supreme Court for the District of Columbia, between Benjamin H. Cheever, complainant, and Lewis and Annie J. Worcester and Jesse B. Wilson, defendants.

Therefore you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk to attend the execution of this commission, that at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the plaintiff or defendant; and that you examine them upon their corporal oaths, to be by you administered on the Holy Evangely of Almighty God, touching their knowledge or remembrance of anything that may relate to the cause aforesaid; and

154 that you cause notice to be given to the parties or their attorneys of the execution of this commission, before you execute the same; and having reduced the depositions of the witnesses so taken by you into writing, you send the [the] same with this commission closed under your hands and seals to the justices of the said Supreme Court with all convenient speed.

Witness the Honorable D. K. Cartter, esq., chief justice of the said court, the 18th day of January, in the year of our Lord one thousand eight hundred and sixty-four.

Issued the 18th day of January, 1864.

[SEAL.] RETURN J. MEIGS, *Clerk, &c.*

[5-ct. rev. stamp. R. J. M. Jan'y 18, 1864.]

155 *Commissioner's oath.*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examinations and depositions of all and every witness and witnesses produced and examined, by virtue of the commission hereunto annexed, upon the interrogatories now, or which may hereafter, before the said commission is closed, be produced to and left with you by either of the said parties; so help you God.

E. P. BREED.

The above oath was administered by me this 26th day of January, 1864, to Enoch P. Breed, within named. Dated at New York, this 26th day Jan'y, 1864.

W. S. PINCKNEY,
Not. Pub. County of N. Y.

Clerk's oath.

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe
156 the depositions of all and every the witness and witnesses produced before and examined by the commissioners named in the commission hereunto annexed, as far as you are directed and employed by the said commissioners to take, write down, and transcribe the said depositions, or any of them; so help me God.

The execution of the within commission appears in a certain schedule hereto annexed.

[SEAL.] E. P. BREED.

Decree of gen. term, Oct. 22, '67.

BENJAMIN H. CHEEVER
vs.
ANNIE J. WORCESTER and JESSE B. WILSON. } 1,398. Equity docket 8.

And now, on this 22d day of October, 1867, the same being the second day of the general term of said court, the above cause coming up for hearing upon the petition for an appeal to the Supreme Court of the United States, filed by the plaintiff herein, from the
157 final decree of this court, rendered herein March 24th, 1866, it is ordered that an appeal be allowed, and the clerk directed to make transcripts of the papers, and transmit the same, without delay, to the clerk of the Supreme Court of the United States.

By order of the court.

Teste: R. J. MEIGS, *Clerk.*